UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/81/Add.13
2 June 1998

ENGLISH ONLY*

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial report of States parties due in 1993

Addendum

ISRAEL

[9 April 1998]

* In view of the length of the document and the shortness of the period between the date of submission by the State party of the Revised Report and the date of examination by the Human Rights Committee, the present document is circulated in the language of submission only.

GE.98-16365 (E)

BEST COPY AVAILABLE

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/81/Add.13
2 June 1998

ENGLISH ONLY*

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial report of States parties due in 1993

Addendum

ISRAEL

[9 April 1998]

* In view of the length of the document and the shortness of the period between the date of submission by the State party of the Revised Report and the date of examination by the Human Rights Committee, the present document is circulated in the language of submission only.

GE.98-16365 (E)

CONTENTS

		Paragraphs
Introduction		1 - 35
Article 1	Self-determination	36 - 41
Article 2	Implementation of rights in the Covenant	42 - 56
Article 3	Equal rights of men and women	57 - 105
Article 4	States of emergency	106 - 123
Article 5	Non-derogable nature of fundamental rights	124 - 125
Article 6	Right to life	126 - 167
Article 7	Freedom from torture or cruel, inhuman or degrading treatment or punishment	168 - 242
Article 8	Prohibition of slavery	243 - 255
Article 9	Liberty and security of person	256 - 309
Article 10	Treatment of persons deprived of their liberty	310 - 359
Article 11	Freedom from imprisonment for breach of contractual obligation	360 - 366
Article 12	Freedom of movement	367 - 392
Article 13	Expulsion of aliens	393 - 403
Article 14	Right to fair trial; judicial independence	404 - 462
Article 15	Prohibition of ex post facto laws	463 - 474
Article 16	Recognition as a person before the law	475 - 479
Article 17	Freedom from arbitrary interference with privacy, family, home	480 - 531
Article 18	Freedom of religion and conscience	532 - 580
Article 19	Freedom of opinion and expression	581 - 615
Article 20	Prohibition of propaganda relating to war and racial, national or religious hatred	616 - 628
Article 21	Freedom of assembly	629 - 641
Article 22	Freedom of association	642 - 691

CONTENTS (continued)

		Paragraphs
Article 23	Protection of the family	692 - 732
Article 24	Protection of children	733 - 800
Article 25	Access to the political system	801 - 821
Article 26	Equality before the law	822 - 861
Article 27	Rights of minorities to culture, religion and language	862 - 893

INTRODUCTION

A. Land and people

Geography

1. Israel's area within its boundaries and ceasefire lines is 10,840 square miles (27,800 sq. km^2). Long and narrow in shape, it is some 280 miles (450 km) in length and about 85 miles (135 km) across at the widest point. The country may be divided into four geographical regions: three parallel strips running north to south and a large, mostly arid zone in the southern half.

Demographics

2. As of October 1997, the total population of Israel numbered 5,863,000 with over 4.7 million Jews (80.2 per cent of the total population), 872,000 Muslims (14.9 per cent), about 190,000 Christians (3.2 per cent) and around 100,000 Druze and other faiths (1.7 per cent).

3. The population of Israel increased in 1996 by 140,000, of whom 88,000 are Jews, representing a lower rate of increase than in 1995. In 1990-1991, at the height of immigration from the former USSR and the CIS, the average annual growth rate was 250,000. Since the beginning of 1990 the population of Israel has increased by a total of 26.3 per cent.

4. The birth-rate in 1995 was 21.1 per 1,000, while the infant mortality rate was 6.8 per 1,000. As of 1993, life expectancy for male Israelis was 75.3 years and for female Israelis 79.5 years. The total fertility rate was 2.9 per 1,000. 29.7 per cent of the population was aged 14 or younger while 9.5 per cent of the population was aged 65 or older.

5. Israel has a literacy rate of over 95%.

The Economy

6. Israel's Gross Domestic Product (GDP) in 1996 was 272.8 billion new Israeli shekels (NIS) (approximately US$ 85 billion) in 1995 constant prices. GDP per capita for this period was approximately 48,000 NIS (approximately $15,000). The external debt was $44.28 billion.

7. The dollar exchange rate at the close of 1990 was 2.048 NIS per $1, and at the close of 1995, 3.135 NIS per $1. The annual average of the dollar exchange rate in 1990 was 2.0162, and in 1995, stood at 3.0113. In 1997 the dollar exchange rate was about 3.5 NIS per $1.

Language

8. Hebrew and Arabic are the official State languages. They are primary languages of instruction in compulsory education, and either language may be used by a member of the Knesset (Israel's parliament) to address the House. Israel television and radio broadcast in Hebrew, Arabic and, to a lesser extent, English, Russian and Amharic.

B. General political structure

Recent history

9. The State of Israel was founded on 15 May, 1948. Israel represents the culmination of almost 2,000 years of longing on the part of the Jewish people for the reestablishment of an independent State. A guiding principle for all governments of Israel since its inception has been the "ingathering of the exiles", the historic return of the Jewish people to its ancestral land. This concept was enshrined in the Declaration of Independence and has continued to be a major component of Israel's national life to the present day. In the words of Israel's Declaration of Independence, the State "extend(s its) hand to all neighbouring States in an offer of peace and good neighbourliness."

10. In 1977 the late President of Egypt, Anwar Sadat, became the first Arab head of State to visit Israel. In 1979 a treaty of peace was signed between Israel and Egypt. The Madrid Peace Conference, convened in October 1991, was the first time that Israel, the Syrian Arab Republic, Lebanon, Jordan and the Palestinians had met in an open and public setting for the specific purpose of negotiating peace. In September 1993, Israel and the Palestine Liberation Organization signed the Declaration of Principles in Washington D.C., and in November 1994, Israel and Jordan concluded a peace treaty, formally ending 46 years of conflict. In September 1995 Israel and the PLO signed the Interim Agreement on the West Bank and Gaza Strip and, pursuant to that agreement, a Final Status Agreement regarding these territories is to be concluded by 1999.

Structure of Government

11. Israel is a parliamentary democracy, consisting of legislative, executive and judicial branches. Its institutions are the presidency, the Knesset (parliament), the Government (Cabinet), the judiciary and the Office of the State Comptroller.

12. The system is based on the principle of separation of powers, with checks and balances, in which the executive branch (the Government) is subject to the confidence of the legislative branch (the Knesset) and the independence of the judiciary is guaranteed by law.

The presidency

13. The President is the head of State, and his office symbolizes the unity of the State, above and beyond party politics.

14. Presidential duties, which are primarily ceremonial and formal, are defined by law. Among the President's formal functions are the opening of the first session of a new Knesset, accepting the credentials of foreign envoys, signing treaties and laws adopted by the Knesset, appointing judges, appointing the Governor of the Bank of Israel and heads of Israel's diplomatic missions abroad, pardoning prisoners and commuting sentences on the advice of the Minister of Justice. The President's approval is required prior to dissolving the Knesset by the Prime Minister.

15. The President, who may serve two consecutive terms, is elected every five years by a simple majority in the Knesset from among candidates nominated on the basis of their personal stature and contribution to the State.

The Knesset

16. The Knesset is the House of Representatives of the State of Israel; its main function is to legislate. Elections for the Knesset and for the Prime Minister are held simultaneously. They are secret, and the entire country constitutes a single electoral constituency. Knesset seats are assigned in proportion to each party's percentage of the total national vote. A party's surplus votes, that is, those which do not reach the threshold for an additional seat, are redistributed among the various parties according to their proportional size resulting from the elections, or as agreed between parties prior to the election.

17. The Knesset is elected for a tenure of four years, but may dissolve itself or be dissolved by the Prime Minister, with the President's approval, before the end of its term. Until a new Knesset is formally constituted following elections, full authority remains with the outgoing government.

18. The Knesset operates in plenary sessions and through 13 standing committees: the House Committee; the Foreign Affairs and Security Committee; the Finance Committee; the Economics Committee; the Interior and Environment Committee; the Education and Culture Committee; the Labour and Social Affairs Committee; the Constitution, Law and Justice Committee; the Immigration and Absorption Committee; the Committee for State Audit Affairs; the Committee on the War Against Drug Addictions; the Science Committee and the Committee for Advancing the Status of Women.

19. In plenary sessions, general debates are conducted on government policy and activity, as well as on legislation submitted by the government or by individual Knesset members. Debates may be conducted in Hebrew and Arabic; simultaneous translation is available.

The Government

20. The Government (Cabinet of Ministers) is the executive authority of the State, charged with administering internal and foreign affairs, including security matters. Its policy-making powers are very wide and it is authorized to take action on any issue which is not delegated by law to another authority. The Government usually serves for four years, but its tenure may be shortened by the resignation of the Prime Minister or by a vote of no-confidence.

21. The Prime Minister is elected directly by popular vote, simultaneously with the Knesset elections. Until the 1996 elections, the task of forming a government and heading it was assigned by the President to the Knesset member considered to have the best chance of forming a viable coalition government.

22. The ministers are responsible to the Prime Minister for the fulfilment of their duties and are accountable for their actions to the Knesset. Most

ministers are assigned a portfolio and head a ministry; others serve without a portfolio but may be called upon to take responsibility for special projects. The Prime Minister may also serve as a minister with a portfolio.

23. The number of ministers, including the Prime Minister, may not exceed 18, nor be less than 8. At least half the ministers must be Knesset members, but all must be eligible for candidacy for Knesset membership. The Prime Minister, or another minister with prime ministerial approval, may appoint deputy ministers, up to a total of six; all must be Knesset members.

The Judiciary

24. The absolute independence of the judiciary is guaranteed by law. Judges are appointed by the President, on the recommendation of a special nominations committee comprised of Supreme Court judges, members of the bar, ministers and Knesset members. Judges' appointments are with tenure, until mandatory retirement at age 70.

25. Magistrates' and District Courts exercise jurisdiction in civil and criminal cases, while juvenile, traffic, military, labour and municipal appeal courts each deal with matters coming under their jurisdiction. There is no trial by jury in Israel.

26. In matters of personal status such as marriage, divorce and, to some extent, maintenance, guardianship and the adoption of minors, jurisdiction is vested in the judicial institutions of the respective religious communities: the Rabbinical court, the Muslim religious courts (Shari'a courts), the religious courts of the Druze and the juridical institutions of the 10 recognized Christian communities in Israel.

27. The Supreme Court, seated in Jerusalem, has nationwide jurisdiction. It is the highest court of appeal on rulings of lower tribunals. In its capacity as High Court of Justice, the Supreme Court hears petitions in constitutional and administrative law issues against any government body or agent, and is a court of first and last instance.

28. Although legislation is wholly within the competence of the Knesset, the Supreme Court can and does call attention to the desirability of legislative changes. It also has the authority to determine whether a law properly conforms with the Basic Laws of the State and to declare a law void.

The State Comptroller

29. The State Comptroller carries out external audits and reports on the legality, regularity, economy, efficiency, effectiveness and integrity of the public administration in order to assure public accountability. Israel recognized the importance of State audit in a democratic society and in 1949 enacted a law which established the Office of the State Comptroller. Since 1971, the State Comptroller has also fulfilled the function of Public Complaints Commissioner (ombudsman) and serves as an address to which any person may submit complaints against State and public bodies which are subject to the audit of the comptroller.

30. The State Comptroller is elected by the Knesset in a secret ballot for a five-year term. The Comptroller is accountable only to the Knesset, is not dependent upon the Government, and enjoys unrestricted access to the accounts, files and staff of all bodies subject to audit. The Comptroller's activities are carried out in cooperation with the Knesset Committee for State Audit Affairs.

31. The scope of State audit in Israel is among the most extensive in the world. It includes the activities of all government ministries, State institutions, branches of the defence establishment, local authorities, government corporations, State enterprises, and other bodies or institutions declared subject to audit.

32. In addition, the State Comptroller has been empowered by law to inspect the financial affairs of the political parties represented in the Knesset, including election campaign accounts and current accounts. When irregularities are found, monetary sanctions are imposed.

Basic Laws

33. Israel has no formal constitution as yet. Instead, it has chosen to enact Basic Laws dealing with different components of its constitutional regime; these Basic Laws, taken together, comprise a "constitution-in-the-making".

34. The Basic Laws are adopted by the Knesset in the same manner as other legislation. Their constitutional import is derived from their nature and, in some cases, from the inclusion of "entrenched clauses" whereby a special majority is required to amend them. The following are the Basic Laws of the State of Israel: Knesset (1958); State Lands (1960); President (1964); State Economy (1975); Israel Defence Forces (1976); Jerusalem (1980); Administration of Justice (1984); State Comptroller (1988); Human Dignity and Liberty (1992); Freedom of Occupation (1992); The Government (1992).

35. There are currently three additional draft Basic Laws being circulated prior to their submission to the Ministerial Committee on Legislation: Draft Basic Law: Due Process Rights, Draft Basic Law: Social Rights, and Draft Basic Law: Freedom of Expression and Association.

Article 1 - Self-determination

36. Israel's recognition of the universal right to self-determination is embodied in its Declaration of Independence, which contains a clear commitment that Israel will be "faithful to the principles of the United Nations Charter".

37. The State of Israel maintains a democratic, republican form of government through a system of national elections which are prescribed by law. As discussed under article 25, every citizen of at least 18 years of age is entitled to vote, without distinction as to gender, race, colour, ethnicity, wealth, property or any other status (Basic Law: Knesset, sect. 5). The voting rate in national elections is generally very high in all sectors of the population. While a person may be denied the right to vote only by judgement

of a competent court pursuant to valid legislation (Basic Law: Knesset, sect. 4), no statutory provisions have been enacted to enable denial of the right to vote.

38. The citizens of the State of Israel are able to determine their "political status" not only through election of the national leadership, but also through local and regional elections, which are discussed under article 25, and, indirectly, through the legislative process.

39. Reference is made to the Introduction of this report for a discussion of Israel's ongoing diplomatic efforts in the peace process.

Economic and Cultural Development

40. The right to pursue economic development has long been recognized in the case law as a basic pillar of Israel's liberal-democratic political order. Israeli legislation bearing on the right to economic development tends to grant these rights to individuals, and not to groups as such. Indirectly, however, the enjoyment of many fundamental individual rights discussed in this report, such as the right to freedom of speech, opinion and association, the protection of the right to property, the right to pursue a vocation, and the right to freedom of religion and conscience, create the groundwork on which groups may pursue their economic and cultural development. A draft Basic Law: Social Rights, which was prepared following Israel's ratification of the Covenant on Economic, Social and Cultural Rights, and which is currently being circulated prior to submission to the Ministerial Committee on Legislation, should bolster that foundation. (Cultural and economic development in minority communities is discussed under article 27.) The State of Israel has combined a largely free-market economy with a scheme of basic civil and political rights to provide the basis for free and liberal pursuit of economic and cultural development. The only legitimate restraints on such pursuit involve fair and reasonable economic regulation, and measures necessary to protect national security or public welfare.

41. The State of Israel does not prevent the free disposition of the country's natural wealth and resources, nor those that may be owned by any distinct sub-group of the population. At the same time, Israel retains its prerogative to regulate the export of natural resources and to impose duties thereon.

Article 2 - Implementation of rights in the Covenant

42. International agreements are not, as such, part of Israeli internal law, and the Knesset generally does not legislate by way of direct reference to such agreements. Accordingly, the provisions of the Covenant have not been made a part of internal Israeli law by an enactment of the Knesset. However, the basic rights protected by the Covenant are to a very great extent already guaranteed by internal Israeli legislation or case law, and effective mechanisms exist for the assertion and enforcement of such rights, both in the courts and through other arms of government, as described under the other articles in this report. For this reason, among others, it has not been deemed necessary to enact implementing legislation to give effect to the

provisions of the Covenant. Thus, as a matter of domestic law, the Covenant does not, by itself, create private rights directly enforceable in Israeli courts.

43. Of particular importance for the implementation of the rights guaranteed by the Covenant, and particularly for Israel's obligations under subsection 2 of this article, is the wave of legislative reform in that it has followed the enactment of Basic Law: Human Dignity and Liberty. As discussed under many articles in this report, the fundamental rights guaranteed in that Basic Law not only form the basis for interpretation of previous legislation, and the limiting criteria for new laws; in addition, the Basic Law has itself stimulated numerous legislative efforts, in areas such as arrest and detention, searches and seizures, legal aid, restrictions on emergency legislation, privacy, imprisonment for civil debts, freedom of information, the rights of people with disabilities, and the rights of patients, which aim to give the fullest practical realization of the principles embodied in the Basic Law. The explanatory notes for the three draft Basic Laws (see para. 35) explicitly mention Israel's ratification of the Covenant, among other instruments, as a motivating consideration in developing these new constitutional laws.

44. The law enforcement authorities - primarily the Police and Prisons Service - have established a thorough regimen of training in the area of human rights in courses for officers and trainees. The curriculum at these courses, as described under article 9 below, includes study of relevant legislation and Supreme Court rulings, development of interpersonal skills, and lectures by representatives of non-governmental organizations working in the field of human rights.

45. Senior officials and legal advisers in numerous ministries and other government authorities were consulted during the preparation of this report. At these consultations, the obligations under the Covenant, as well as the interpretation of those obligations by the Human Rights Committee, were reviewed as they pertained to the activities of each ministry or authority. In addition, an interministerial task force has been set up to carry out ongoing reporting on the implementation of the rights guaranteed by the Covenant. It is anticipated that these internal reporting mechanisms will be the beginning of a process that will foster awareness of the rights and freedoms under the Covenant, both within government authorities and, gradually, among the general public. This report will be widely distributed to officials in all government ministries and authorities, to members of the judiciary, to NGOs, scholars, policy institutes, libraries and the like. Prior to appearing before the Human Rights Committee, the Ministry of Justice and the Ministry of Foreign Affairs will hold a public seminar on this report, at which NGOs will be invited to offer comments and feedback. Until now, the work of publicizing the Covenant has been done for the most part by various NGOs working in the field of human rights, academic symposia and, indirectly, by the media, when the provisions of the Convention are invoked in certain petitions to the High Court of Justice. The Ministry of Education has circulated materials on the Universal Declaration of Human Rights for use in the public school curriculum.

46. The implementation by the State of Israel of its obligation to maintain equality in the enjoyment of the rights under the Covenant is discussed in detail under many of the other articles, particularly articles 3, 26 and 27.

Nationality

47. The State of Israel was expressly established as a Jewish, democratic State, which would be a homeland for Jews from around the world and at the same time would accord all of its citizens the full enjoyment of civil, political and social rights. In 1950, the Knesset enacted the Law of Return, 5710-1950, under which Jews who immigrate to Israel may be accorded the status of *oleh* (lit. "a person who ascends"), which automatically entitles them to citizenship, as discussed below, unless the person is deemed likely to endanger public health, the security of the State or public welfare, or the person is "engaged in an activity directed against the Jewish people" (Law of Return, sect. 2 (b)). The rights of an *oleh* are also extended to the spouse of a Jew, to the child and grandchild of a Jew and to their spouses, respectively (Law of Return, sect. 4 A).

48. In 1952, the Knesset enacted the Nationality Law, 5712-1952, which provided a new regime for granting citizenship in place of the institution of Mandatory citizenship, which had been annulled. Under the Nationality Law, Israeli citizenship may be acquired by birth; by residence; by a combination of birth and residence, by return, under the Law of Return; by naturalization; and by grant. All persons, regardless of religion or ethnicity, who are born in Israel - and, in most cases, also outside Israel - to a parent who is an Israeli citizen automatically are citizens themselves. In general, non-Jews can attain citizenship through birth, residence, or naturalization, while Jews attain citizenship primarily by birth or by return. The main difference between Jews and non-Jews in this regard relates to foreign nationals residing abroad who wish to come to Israel and to become citizens. In any case, the *manner* in which persons become Israeli citizens does not affect in any way the scope of their rights and privileges deriving from citizenship, such as the right to vote and be elected, or the right to hold public office.

49. Initially, citizenship by residence was granted to persons who held Palestinian citizenship during the Mandatory period; who were continuously resident in Israel from the establishment of the State until the entering into force of the Law (14 July 1952), or who entered Israel legally during that period; and who were registered as an inhabitant with the Population Administration shortly prior to the commencement of the Law. Citizenship was also granted to the children of persons who became Israel nationals by residence under the above terms (Nationality Law, sect. 3). Many Arabs, however, did not meet the criteria for citizenship by residence, particularly among those who entered or re-entered what had become the State of Israel following the War of Independence and during the four years until enactment of the Nationality Law; most such persons were initially granted permanent resident status. In 1980, the Nationality Law was amended to broaden substantially the category of persons who were entitled to citizenship by residence, by eliminating the requirement of continuous residence in Israel and extending citizenship to all descendants of persons thus nationalized by residence, instead of only to their children. As a result, almost all Arab residents of Israel are now citizens of the State.

50. **Naturalization**. The criteria for acquisition of citizenship by naturalization under Israeli law are modelled on those applicable in perhaps more than 100 other States. Under section 5 of the Nationality Law, a person over 18 years of age may attain Israeli nationality if he or she:

(a) Is in Israel; and

(b) Has been in Israel for three out of the five years preceding the application for citizenship; and

(c) Is entitled to reside in Israel permanently; and

(d) Has settled, or intends to settle, in Israel; and

(e) Has some knowledge of the Hebrew language; and

(f) Has renounced his or her prior nationality or has proved that he or she will cease to be a foreign national upon becoming an Israeli national.

These requirements are subject to several specific exemptions, and the Minister of Interior has discretion to exempt an applicant from several of the above conditions if there is a special justification for doing so. Upon being naturalized, a person's minor children automatically become Israeli citizens, except in rare circumstances (sect. 8).

51. **Nationality by birth**. A person born in Israel whose mother or father was an Israeli national will also be an Israeli national. If, on the other hand, that person is born outside Israel, then he or she will be granted citizenship unless his or her parent also acquired citizenship by birth abroad to an Israeli parent. Originally, the Law allowed the descendants of Israeli nationals living abroad automatically to be deemed citizens, regardless of how many generations had passed. In 1980, the Law was amended to limit such automatic conferral of citizenship to a single generation. The second-generation children may nevertheless become Israeli citizens upon application. It may be clarified that acquisition of Israeli citizenship by birth does not involve any distinction in law or in fact between Jews and non-Jews.

52. Two other avenues of acquiring citizenship were instituted by amendment to the Nationality Law. Under section 4 A of the Law, a person who was born after the establishment of the State in a place which was Israel territory on the day of his birth, and who has never had any nationality, may become an Israeli citizen, provided he or she has been a resident of Israel for at least five years preceding the application. In addition, the spouse of an Israeli national may obtain Israeli citizenship by naturalization, even if he or she is a minor or does not meet the statutory requirements for naturalization (sect. 7 of the Law).

53. **Loss of citizenship**. Under section 11 of the Nationality Law, an Israeli national may have his or her citizenship revoked in three sets of circumstances: if the acquisition of citizenship was based on the submission of false or fraudulent information, as discussed under article 13; if he or she performs an act "constituting breach of allegiance to the State of

Israel"; or if he or she leaves Israel illegally for one of seven States mentioned in the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, or acquires the nationality of one of those States. As a practical matter, a "breach of allegiance" has never been invoked to terminate the citizenship of an Israeli national, and the annulment of citizenship for illegal entry into prohibited countries is no longer applied. In addition, an Israeli national may voluntarily renounce his or her citizenship, or that of his or her children, under certain circumstances (sect. 10 of the Nationality Law).

54. Permanent residency status is granted by discretion of the Minister of Interior, as discussed under article 12.

55. So long as resident aliens are within Israel pursuant to a valid residency permit, they are accorded the full range of basic civil, political and social rights under Israeli law, except for those rights deriving from citizenship (such as the right to vote in Knesset elections and to run for election, the right to receive a passport, the right to hold public office, and the unlimited right of re-entry into the country after leaving it). Non-resident aliens enjoy full civil and political rights in their dealings with the justice and law enforcement systems, including the right to petition the courts, freedom from arbitrary arrest, the right to due process, the freedom from arbitrary or cruel and unusual punishment; they also enjoy full equality of the rights to freedom of speech, religion, movement, privacy, assembly, and other rights under this Covenant. In certain areas, typically related to employment or economic entitlements, non-resident aliens do not enjoy the same rights as citizens and resident aliens.

56. Remedies available under Israeli law for denial or removal of citizenship or permanent residency status are discussed under article 12. Remedies available for violation of the various rights under the Covenant in general are discussed under the particular article referring to the right in question.

Article 3 - Equal rights of men and women

Constitutional principles and legislation

57. In the absence of a written constitution, Israel has developed the basic constitutional principles of its legal system in an accumulating series of Basic Laws and through judicial interpretation. Except for a provision in Basic Law: Knesset requiring that national elections be "equal", the right to equality is not mentioned directly in any of the Basic Laws, including the two most recent Basic Laws dealing with individual rights, Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation. The reason for this exclusion, as a normative and practical matter, resides perhaps primarily in the systemic accommodation that Israel has maintained between its character as a liberal democracy and the prerogative it has granted to religious law in various areas of public and private life. While the right to equality is not expressly enshrined in the language of the Basic Laws, it has long been considered an "unwritten fundamental right" in Israel's constitutional order by the Supreme Court. The Court established this fundamental, if unwritten, right to equality by giving constitutive weight to the fact that Israel was

founded as a democracy; it also took note of the passage in the Declaration of Independence stating that "The State of Israel will maintain complete equality in social and political rights for all citizens, irrespective of religion, race or sex." Although the Declaration does not itself have binding constitutional force, the 1992 Basic Law: Human Dignity and Liberty provides that the human rights it articulates shall be interpreted "in the spirit of the principles in the Declaration of Independence" (sect. 1). The trend of opinion among members of the Court appears to be that the basic right to human dignity includes various unenumerated rights, such as the right to equality. Until recently, the Court has taken the view that it may invalidate secondary legislation, such as administrative regulations, which violate "unwritten" fundamental rights, but not primary legislation enacted by the Knesset, in view of the Knesset's supremacy. In the aftermath, however, of the enactment of two Basic Laws mentioned above, the Court has held that it may now invalidate Knesset legislation which violates those fundamental individual rights beyond the extent allowed by the limitation clauses in those Laws.

58. Given the lack of a written constitutional right to equality, the principle of gender equality has been given form largely through specific legislation and case law. The first significant legislative effort to implement the principle of gender equality was the Women's Equal Rights Law, 5711-1951, which provides that one law shall apply to men and women regarding any "legal act", and that any law that discriminates as such shall not be binding. The law also equates the legal status of women to that of men. Although the law deals specifically with the rights of married women regarding property ownership, and with the rights of women as mothers regarding their children, it does not apply directly to matters of marriage and divorce as such. Moreover, the Women's Equal Rights Law is an ordinary statute, which in theory can be revoked or qualified by subsequent legislation. Nevertheless, the Supreme Court has accorded the law almost constitutional weight in its decisions, calling it "an ideological law, revolutionary, a change of social structure". Prohibition of discrimination on the basis of gender in the private sector is guaranteed in discrete areas by legislation, such as the Equal Employment Opportunities Law, 5748-1988, the Equal Pay (Male and Female Employees) Law, 5756-1996, which are discussed below, and to a certain extent by judicial decisions which have applied the non-discrimination principle in private settings. Other legislative enactments, described in the following sections, promote the equal status of women and men in a wide range of affairs, such as the rights of working pregnant women and mothers, affirmative action, the prevention of domestic violence, national security entitlements, and so on.

International instruments

59. Israel is a party to the Convention on the Elimination of all Forms of Discrimination against Women and submitted its initial and first periodic report under that Convention in March 1997. Israel is also a party to the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the Convention on the Political Rights of Women and the Convention on the Nationality of Married Women.

Participation of women in politics and public life

60. **Voting**. There is full equality between men and women regarding the right to vote and to be elected in Israel. Section 5 of Basic Law: The Knesset specifically states that every Israeli citizen aged 18 or older is entitled to vote, and section 6 of the law states that every Israeli citizen aged 21 or older is entitled to run for election. There is no noticeable difference between men and women regarding participation in the act of voting (approximately 85 per cent for both sexes). In the Arab community, women have a higher rate of voting in national elections (89.1 per cent) than men (80.5 per cent).

61. **Women's representation in political parties and the Knesset**. Women operate within political parties under two categories: in specific women's sections and as individual members. Women may be considered to have a dual role, of recruiting support for the party among female constituents, and of promoting women's representation in the party. The introduction, in several political parties, of primary elections in 1992, in which only registered members of the party in question may vote for its candidates to the Knesset, has heightened the sensitivity to the significance of women party members. In a recent survey, 17.0 per cent of the men and 10.9 per cent of the women respondents reported actual membership in political parties. Moreover, 44.3 per cent of the women polled stated that they did not support nor were active in any political party. A small number of women hold high-ranking positions in Israeli political parties. These include Zehava Galon, the General Secretary of Meretz (Israel Democratic Party); Tamar Gozhansky, one of the leading members of Chadash (Democratic Party for Peace and Equality); Limor Livnat (Likud), current Minister of Communications; and until recently, Shulamit Aloni, who founded the Citizen's Rights Party and served as a Cabinet minister in the government headed by the late Yitzhak Rabin. None of the religious parties has had any female candidates in viable places on their party lists. In the 1996 elections, 69 women ran in party primaries. The Labour party secured 6 places (out of 44) on its Knesset candidates list; the Likud party placed 3 women (out of 42); and Meretz secured 3 places for women (out of 14) on its list.

62. The representation of women in the Knesset has varied between 6 and 10 per cent over Israel's history. In the 1996 elections, 9 women (out of 120 Knesset members) were elected to the Knesset, a slight decline from the level of representation in the previous Knesset. Many of the powerful positions in the Knesset have never been assigned to women. For example, there has never been a woman Knesset Speaker, though in quite a few instances women have served as deputy speakers. On the two most powerful Knesset committees, the Foreign and Security Affairs Committee and the Finance Committee, few women have been members. As in other countries, women are relatively well represented on committees responsible for matters related to traditional women's interests, such as education, welfare and social services. Women members of Knesset have been active in promoting bills and petitions dealing with the family, welfare, social and economic matters. In the present Knesset, elected in 1996, the nine women in the Knesset serve on one or more of the following Knesset committees: one woman heads the Absorption Committee and another heads the Science and Technology Committee; there is one woman serving on the Constitution, Law and Justice Committee; three women on the

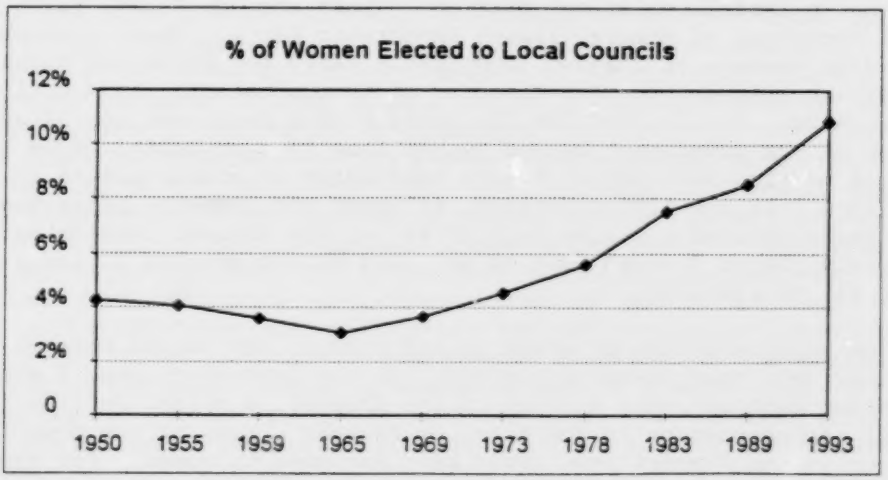
Labour Committee; three women on the Education and Culture Committee; three women on the Immigration Committee; two women on the Interior Affairs Committee; and several women on the Committee for the Advancement of the Status of Women, including the Committee chair.

Women in government, local authorities and the civil service

63. Since the establishment of the State of Israel, one woman, Golda Meir, has served as Prime Minister, after having served as a Cabinet minister in a succession of governments and as a Knesset member for 20 years. Six women have served as Cabinet ministers, including one in the present government (out of 17 ministers). In addition, the Director-General of three government ministries, the Ministry of Justice, the Ministry of Environmental Protection and the Ministry of Absorption, are currently women.

64. Women's representation on local councils has been quite limited, although it has risen steadily since the mid-1960s. As of 1993, roughly 11 per cent of local council members were women. Only six women have served as heads of local councils during Israel's history, none of them in a city with a population over 10,000. Currently, one woman is the head of a local council, and seven women serve as deputy mayors.

Figure 1. Women elected to local councils



65. As of December 1995, 59.4 per cent of all civil servants were women. However, women are under-represented in senior positions: in December 1995, only 10.5 per cent of senior staff (the top three grades in the four main managerial classifications) were women. At the same time, women made up 62.4 per cent of civil service employees in the lowest ranks (grade 8 and below). Recent data submitted by the Civil Service Commission to the Knesset Committee on the Advancement of Women show that significant progress was made

between December 1994 and December 1996, during which period the number of women holding senior staff positions has more than tripled (from 25 to 85), so that women now make up 14 per cent of senior staff.

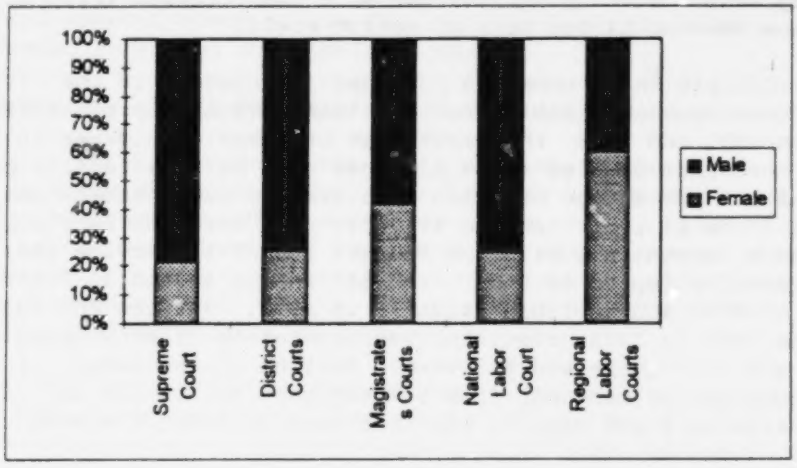
66. The participation of women in internal job tenders in the civil service has been increasing consistently over the last several years. In the four years between 1993 and 1996, the percentage of women candidates in such tenders has more than doubled (from 23.2 per cent in 1994 to 51.9 per cent in 1996), and the percentage of women appointed in such tenders has also more than doubled (from 26.1 per cent to 55.7 per cent over the same period). Participation by women in public job tenders for civil service positions rose much more gradually (up to 35.2 per cent of candidates and 36.7 per cent of appointees in 1995, and declined slightly in 1996. Between the change in the Civil Service Code in 1993, requiring representation of both sexes in tender committees, and 1995 there was an overall decline in the number of such committees composed of men only from 5.4 per cent to 1.6 per cent of internal tenders and from 33.5 per cent to 28.6 per cent of public tenders.

67. **The judiciary and lawyers in the public sector**. The percentage of women in the judiciary is extraordinarily high compared to other areas of public life. In all of the different civil courts combined, there are 146 women judges and 229 men judges, such that 40 per cent of the civil judiciary in Israel is composed of women.

Table 1. Judges, by court and sex

	Female	Male	Total	% Women
JUDGES				
Supreme Court	3	11	14	**21**
District Courts	23	67	90	**26**
Magistrates Courts	87	121	209	**42**
Traffic Courts	14	15	29	**48**
National Labour Court	1	3	4	**25**
Regional Labour Courts	18	12	30	**60**
REGISTRARS				
Local Affairs Courts	28	22	50	**56**
Regional Labour Courts	9	2	11	**82**

Figure 2. Percentage of female and male judges in various courts



Women are also well-represented in public sector legal employment. The present State Attorney is a woman. Her predecessor was the first woman to serve in this position, and was later appointed to the Supreme Court. Four out of the five District Attorneys are women. In the District Attorneys' offices, there are 207 women lawyers as against 126 men, and 237 women attorneys working in other governmental offices compared to 115 men.

68. **Representation in religious bodies**. The Religious Judges Law, 5715-1955, the Rabbinical Courts (Jurisdiction) Law and the Druze Courts Law, 5722-1962, have been interpreted by Jewish, Muslim and Druze religious leaders to mean that only men can serve as judges in these courts. Over the last decade, however, there have been certain important developments in the representation of women in other religious bodies. Following two landmark Supreme Court decisions in 1988, women were granted the right to participate in the Committee for Selection of Chief Rabbis and the right to participate in municipal religious councils. In H.C.J. 953/87, *Poraz* v. *Mayor of Tel Aviv*, 42(2) P.D. 309, the Court affirmed the right of women to participate in the Committee for the Selection of the Tel Aviv Chief Rabbi, holding that the exclusion of women from such political committees dealing with religious matters constitutes unlawful discrimination. In H.C.J. 153/87. *Shakdiel* v. *Minister of Religious Affairs*, 42(2) P.D. 221, the Court granted women the right to be elected to the religious council of the city of Yeruham in southern Israel. The number of women serving on municipal religious councils remains small. Out of 139 such councils, only 12 include a woman.

69. **Government corporations**. Under a 1993 amendment to the Government Corporations Law, 5735-1975, men and women must be appropriately represented on the board of directors of every government corporation, and ministers must appoint directors from the less-represented sex until such representation is achieved. Two subsequent appointments of men to the boards of directors of the Israel Ports and Trains Authority and Israel Refineries, respectively, which had no women members, were invalidated by the Supreme Court. According to research conducted in 1996, 68 per cent of government corporations have taken some affirmative action in the aftermath of the above amendment. In

48 per cent of such corporations women have been appointed as directors where there were no women directors in 1993; in 21 corporations (18.9 per cent) which had women directors in 1993, their number has significantly increased. Still, there are 18 government corporations (16 per cent) in which there are no women directors, and in 12 corporations (11 per cent) the number of women directors remains the same. Overall, women still constitute less than 30 per cent of the directors in the majority of government corporations.

70. **Women in the military and police**. In general, men and women in Israel must perform mandatory military service, although the conditions of service vary between the sexes. Under the Defence Service Law, 5746-1986, men are subject to military service duties between the ages of 18 and 54, women between 18 and 38. The law also differentiates between men and women with regard to the length of mandatory service in the army, the extent of reserve duty obligations, voluntary service, and exemptions. Women are exempt from mandatory service if they are married, pregnant or mothers. There is a legislative exemption for young women who, for reasons of religion or conscience, do not wish to serve in the army. Some of these women perform national service for two years or a shorter period at an accredited institution. Ultra-orthodox males may be exempt from military service if they study in an institute of religious learning and agree not to work during the time they are studying; under this arrangement, such religious students may postpone their military service annually. Approximately 42 per cent of all conscripted soldiers in 1996 were women. While approximately 68 per cent of draftable women were conscripted (the remaining 32 per cent receiving exemptions of one form or another), 83.3 per cent of draftable men were enlisted.

71. In practice, the policy of the Israel Defence Forces (IDF) has been to discourage or forbid women soldiers from serving in combat positions, although they do hold combat-training posts. In a landmark 1995 decision, the Supreme Court held that women could not be excluded from serving as air force pilots based on budgetary and logistical considerations. H.C.J. 4541/94, *Miller* v. *Minister of Defence*, 49(4) P.D. 94. The army has since taken steps to implement the decision in the *Miller* case. Several classes of women have begun the pilot training course, and guidelines have been established to adapt army policy regarding women's service to the potential reality of women combat pilots. The representation of women in various branches of the IDF is shown in the following charts:

Figure 3. Percentage of women officers in service (mandatory and career), by corps

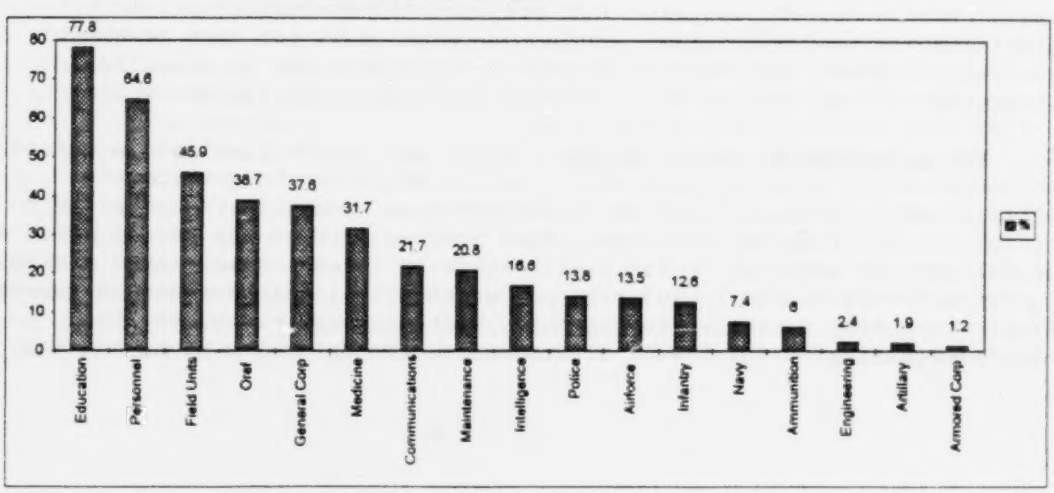
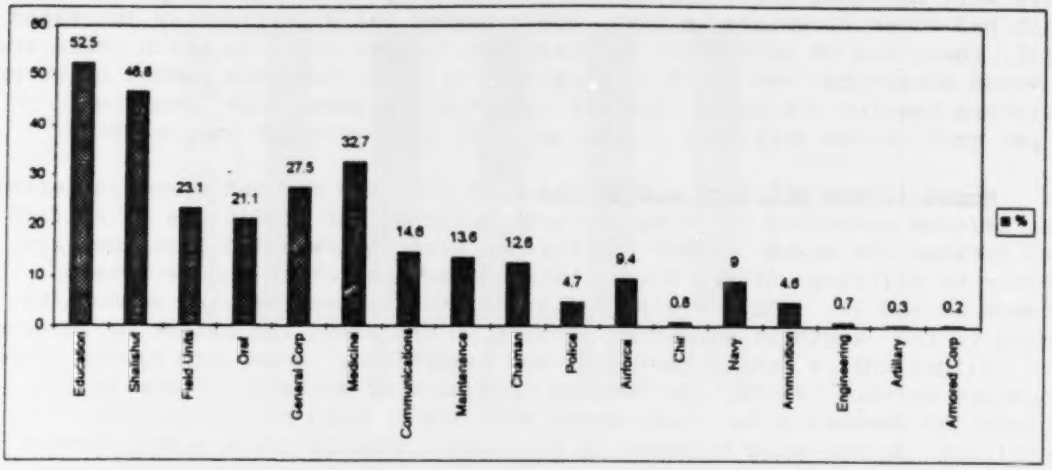


Figure 4. Percentage of women officers in career service, by corps



72. Because women do not serve in combat positions, they are often excluded from the upper echelons of the military hierarchy. In 1995, there were nine women holding the rank of colonel. The proportion of women officers holding the rank of lieutenant-colonel or lower, however, has risen significantly over the last decade.

73. According to Israel Police statistics, women constituted approximately 18 per cent of the police force in Israel as of December 1995. While the police has no official policy limiting women's service, previous army combat experience is either a precondition or a preferred qualification for many positions, including senior positions, effectively barring or hindering women from being able to serve in those positions. A pending 1996 petition to the Supreme Court by women who claimed discrimination against women in police hiring has led the police to establish a committee to investigate the hiring policies regarding women. As of the submission of this report, women serve as the head of the Personnel Division, the head of the Criminal Investigation Division and as the Legal Adviser to the Israel Police.

74. **Other public institutions**. The General Labour Federation (*Histadrut*), discussed under article 22, acts as an umbrella for the majority of labour unions in Israel. In 1995, the Histadrut added a provision to its articles of association requiring 30 per cent female membership in the leadership of every labour union under its auspices. At present, 10 per cent of all workers' committees are headed by women, and women comprise 17 per cent of their membership. Women hold managerial positions in many labour councils; altogether, 51 per cent of the personnel on labour councils are women.

75. **Non-governmental organizations**. Women are deeply involved in myriad non-governmental organizations which aim to influence the governmental decision-making process, both on issues relating specially to women and to the full gamut of social concerns. Some groups, such as the Israel Women's Network and the Association for Civil Rights in Israel, have played a highly significant role in the legislative process and in legal advocacy on issues related to women. Other women's groups, such as Women for Women, the Women's Organization for Political Prisoners, the Jerusalem Link, and the

Association of Women for Peace, have focused their activities on promoting Israeli-Palestinian dialogue and influencing public opinion on Palestinian-Israeli issues.

Equality in employment

76. Until the end of the 1980s there were few statutes which dealt specifically with matters of gender equality in the workplace. The Employment Service Law, 5719-1959, which prohibits discrimination in job referrals on the basis of sex (sect. 42), and the Equal Pay (Male and Female Employees) Law, 5724-1964, requiring that male and female employees receive comparable pay for comparable work, were perhaps the most important early pieces of legislation. The Womens' Equal Rights Law, 5711-1951, while not dealing explicitly with labour-related issues, provided that "one law shall apply to men and women regarding every legal act". Although lacking the constitutional status of a Basic Law, the Supreme Court has interpreted this Law to contain norms of a constitutional nature and has held that, where possible, other laws should be interpreted in conformity with its provisions. In 1987, the Equal Retirement Age (Male and Fem le Employees) Law, 5747-1987, was enacted, prohibiting employers from forcing early retirement on women workers. The broader Equal Employment Opportunities Law, 5748-1988, prohibits discrimination in the workplace based on gender, sexual orientation, marital status, parenthood, race, age, religion, nationality, country of birth, political or other orientation. Neither governmental employers nor private employers with six or more employees may take the above classifications into account in matters of hiring, promotion, termination of employment, training, work or retirement conditions, except in special cases where the unique nature of the position makes those classifications irrelevant. Protections offered to women employees which take into account their special needs as women or mothers are not considered discriminatory, although the law specifies that any such rights offered to working mothers must equally be given to men who either have sole custody of their children, or whose wives work and have chosen not to make use of these entitlements or rights. The range of entitlements offered to pregnant women, new mothers and their spouses are discussed under article 23.

77. The Equal Employment Opportunities Law also recognizes sexual harassment as a form of discrimination in the workplace subject to criminal and civil sanctions. Although harassment is defined relatively narrowly and does not include the notion of a hostile working environment, the law forbids employers from penalizing employees or job applicants in any manner for refusing to accept proposals or advances of a sexual nature. A 1995 amendment to the law has placed the burden of proof upon the employer in civil sexual harassment suits; where an employee has proved refusal of a sexual advance, the employer must then prove that there has been no violation of the law (i.e. that the employee has not been penalized in any manner). The sexual harassment provision in the Equal Employment Opportunities Law applies to all employers, unlike the other provisions in the law, which apply only to those employers with five or more employees.

78. In the civil service, sexual harassment is a disciplinary offence under the Civil Service Code, which defines harassment more broadly than the Equal Employment Opportunities Law. The Code's definition includes any act with the characteristics of a sexual act, including speech or insinuation; it also covers acts by co-workers as well as superiors. In the case of harassment by a superior, the Code provides that the worker's consent is irrelevant, as is

the question of who initiated communication of a sexual nature. A 1995 amendment to the Civil Service Code added the creation of a hostile working environment to the definition of sexual harassment, and provided for legal and professional aid to the plaintiff.

79. A bill which would provide criminal and civil sanctions against all forms of sexual harassment, and would hold employers responsible for not acting to prevent harassment in the workplace, is in its final legislative stages.

80. The Equal Pay (Male and Female Employees) Law, 1996, aims to promote equality between men and women in work compensation. Replacing a similar law from 1964, the new law widens the definition of discrimination, provides greater access to remedies, and implements a progressive notion of pay equity. While the earlier law dealt only with "salaries", the new law extends to "all other forms of compensation", including benefits, bonuses, grants, coverage of expenses and overtime, all of which previously were used by employers to evade the spirit of the law. Instead of requiring employers to pay workers in "essentially equal" positions at the same workplace equal salaries, the new law mandates equal pay for positions at the same workplace that are "equal in value", which is defined as jobs that demand equal qualifications, effort, expertise and responsibility. Any deviation from this standard of equality imposes a burden of proof on the employer that non-gender-related circumstances justify the difference in pay. Employees who are found by the labour court to have been underpaid under the criteria of the new law may sue for up to 24 months' back pay. Employees may not forfeit or qualify their rights under this law.

81. In general, women have become much more involved in the labour market in Israel over the years, but occupational segregation and gaps in pay between men and women remain fairly entrenched. Over the last decade, women's participation in the workforce (i.e. the percentage of women aged 15 and over who are working or unemployed) increased around 1 per cent annually, reaching 45.5 per cent in 1995. During that period, men's participation in the workforce has stayed more or less the same (62.6 per cent in 1995). Women composed 43.2 per cent of the total workforce in 1995, compared to 33 per cent in 1975. The increase in women's participation is evident in almost all age groups, except for the youngest and eldest. Jewish women's level of participation is higher than overall women's participation, reaching 50.5 per cent in 1995. At the same time, participation of Arab women in the workforce has increased, from 13.9 per cent in 1992 to 16.8 per cent in 1994. In 1994, roughly 24 per cent of women were employed full-time, and 16 per cent part-time; among men, 54 per cent worked full-time and 6 per cent part-time. Not surprisingly, the other major difference in work patterns between men and women was that 23 per cent of women in 1994 were classified as "homemakers", which is defined by statute as applying only to females. Homemakers are not considered part of the labour force, as they neither work for pay nor actively seek such work. Women's participation in the labour force is correlated dramatically with their educational level, much more so than is the case with men. In 1995, among Jewish women with 16 years of schooling and over, 77.5 per cent belonged to the workforce, as compared to 74.9 per cent of Jewish men with the same level of education; among Jewish women with 0-4 years of schooling, only 10.1 per cent participate in the workforce. Participation of married women has steadily increased, from roughly 25 per cent in 1967 to roughly 50 per cent in 1995.

82. **Occupational distribution**. Differences in employment patterns between men and women in Israel are shown in the following table showing the relative level of employment in various branches of the economy:

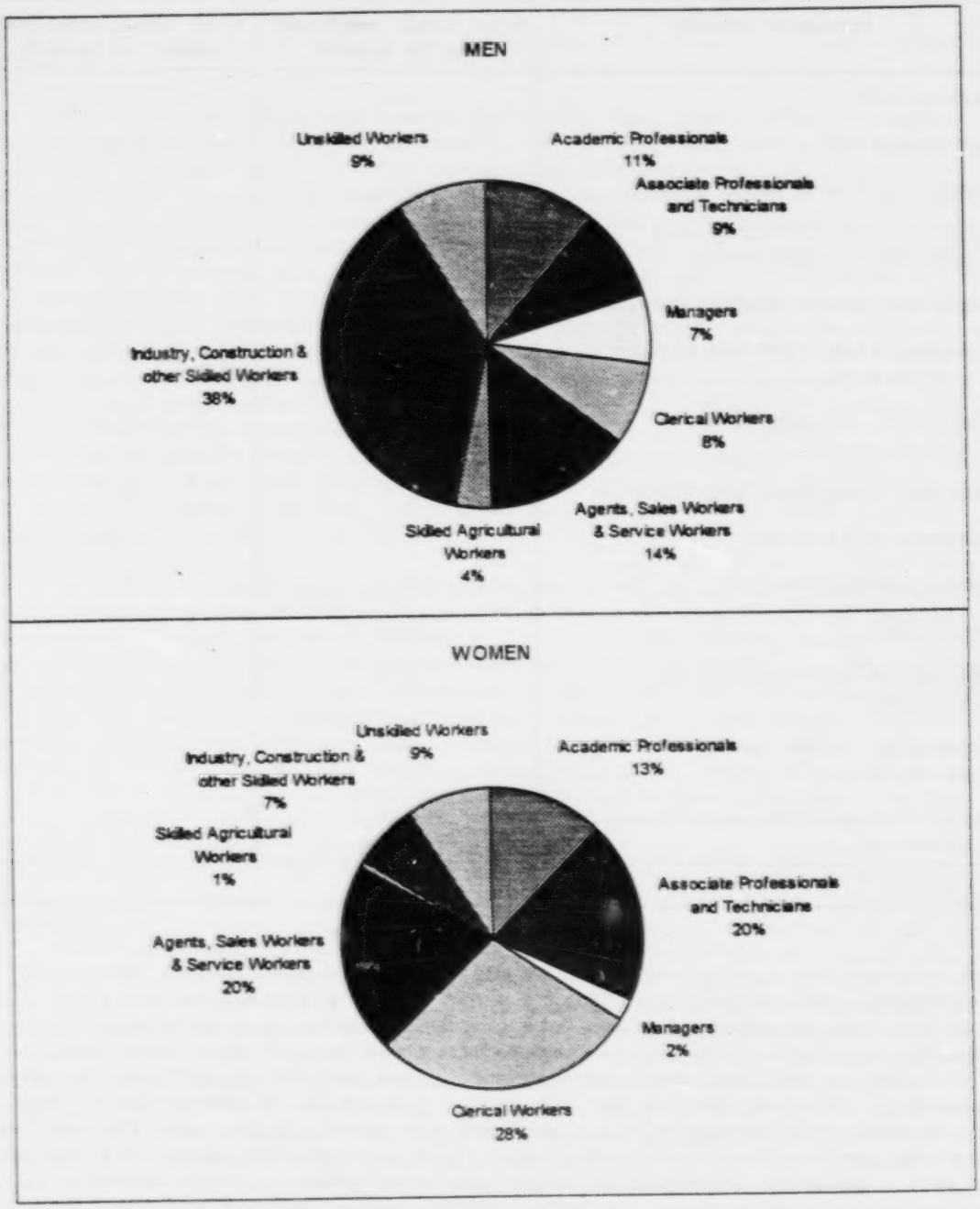
Table 2. Percentage of women and men in economic branches

Economic branch	% of total employed men in branch	% of total employed women in branch
Agriculture	4.2	1.2
Manufacturing	26	13.6
Electricity and water supply	1.5	0.3
Construction (building and engineering projects)	11.8	1
Trade and motor vehicle repair	14	11.1
Accommodation services and restaurants	4	4.4
Transport, storage and communication	7.8	3.3
Banking, insurance and finance	2.6	4.7
Business activities	8.9	9.3
Public administration	5.6	5.3
Education	5.4	21
Health, welfare and social services	3.8	15.6
Community, social and personal services	4.3	5.4
Private households with domestic personnel	0.2	3.6
Total	100	100

Work segregation is also evidenced by differences in distribution among occupational categories. In 1995, as shown in the pie chart below, close to 30 per cent of employed women were clerical workers (a figure that has remained unchanged since 1980), compared to 8 per cent of men; more than 20 per cent of employed women were agents, sales workers or services workers, compared to 14.4 per cent of men. A higher proportion of women than of men were academic professionals (12.5 per cent for women, 11 per cent for men) and associate professionals and technicians (19.5 per cent for women, 9.4 per cent for men). However, it should be noted that most women in these latter occupational categories are teachers, nurses, social workers and the like,

primarily in the public services. Thirty-eight per cent of employed men worked in industry and other skilled labour, compared to only 7 per cent of employed women.

Figure 5. Employed persons, by last occupation



Source: Labor Force Surveys, 1995.

83. **The "glass ceiling"**. Although thoroughgoing data regarding the ability of women to advance to senior positions in their place of employment are difficult to gather, available statistics indicate that a "glass ceiling" still exists for women in the Israeli workplace. According to the Central Bureau of Statistics, in 1995 6.9 per cent of all working men were managers, while only 2.2 per cent of all working women were managers. Of the total managerial segment of the workforce, 19.5 per cent were women in 1995, a slight increase from 1990 (18 per cent of managers were women). During the decade between 1980 and 1990, women made up more than 25 per cent of the increase in total managers.

84. Although women's representation in managerial roles has gradually increased, it is still quite low when compared to the increase in the general rate of women in the workforce. For example, the Union of Industrialists recently conducted a survey of 152 high-tech corporations, which revealed that 14 per cent of the managers in these companies are women, while in 51 per cent of such companies there were no women managers at all. On the other hand, among the larger corporations (100 employees or more), 44 per cent have more than one woman in managerial positions. In the civil service, roughly 60 per cent of all workers, but only 14 per cent of senior staff, were women, according to 1996 data.

85. **Earning gaps**. In all branches of the labour market, a male employee's average monthly income was 1.7 times higher than that of a female employee (1992-1993). This is partly explained by the differences in average weekly work hours, which were 46.3 for men and 34.1 for women. However, a large gap still exists in the average income per hour, which for women was 80 per cent of men's hourly income. This earning gap remains fairly constant when other variables, such as level of education, are taken into account. During the period between 1992 and 1994, the average monthly and yearly salaries of women in the workforce were 50-55 per cent of men's salaries. In 1995, 69 per cent of all employees who earned less than the minimum wage were women. Salary gaps between male and female full-time employees in the civil service have decreased from 29 per cent in 1988 to 24 per cent in 1996.

86. **Employment of Arab women**. Arab women in Israel, on the whole, are far less employed outside of the home than are Jewish women. Of the 350,000 Arab women who are of working age (over 15), roughly 83 per cent do not belong to the workforce, a slight decrease from the 1960s (approximately 91 per cent did not belong to the workforce). The rate of employment of Arab women living in cities is much higher than that of those living in villages, who comprise 90 per cent of all Israeli Arab women. Most Arab villages are located on Israel's periphery, far from centres of economic activity. In the past agriculture was an integral source of income for Arab villages, and Arab women were thoroughly involved in such agricultural work while maintaining their traditional role as housewives. Downsizing in the agricultural sector, which occurred as a result of the appropriation of farm lands, shifted the main economic focus of villages to work in the cities, leaving a vacuum in the job market for Arab women. While many village men moved into the modern workforce and left their villages to work in the Israeli cities, women remained at home to run their households and work the fields, without tangible compensation.

87. The first wave of Arab women seeking work outside their villages began in the 1960s, mostly in jobs at nearby Jewish villages or cooperatives which did not require any formal education or literacy. In the 1970s, Arab women began to take on blue collar positions in factories set up near their villages, particularly in the textile industry. By 1989, the percentage of Arab women who worked in the textile industry, either at factories or in cottage industries within the villages, reached 29 per cent. During the 1990s, more Arab women have entered the Israeli job market, particularly as unskilled labourers, to help their families shoulder increasing financial burdens. In recent years, more Arab women have been taking positions which require a high school education.

88. The reluctance of the traditional Arab communities to allow women to work outside their homes stems from religious, social and economic concerns. Particularly in the villages, the traditional Arab lifestyle places women in the home, not in the workplace or at school. Single Arab women, particularly at the lower and the higher economic strata, work much more frequently than married Arab women. The labour force participation of Arab and Druze women has been found to peak at ages 18-24, and to decline dramatically with marriage or the birth of a first child.

Education

89. Under the Compulsory Education Law, 5709-1949, all children must study between the ages of 5 and 15. Education is provided free of charge through the age of 17, and for 18-year-olds who have not yet completed the eleventh grade. The illiteracy rate (defined to include persons with up to four years of schooling) is higher among women than among men, although dramatic improvements have been made in this respect among all sectors of the population. Median years of schooling is lowest among Arab women (9.7 years in 1994, as compared to 10.6 years among Arab men); Jewish women and men have more or less identical median educational levels (12.2 and 12.3 per cent in 1993). However, there has been a steady and significant increase in the median educational level within the general Arab population, and when specific age groups are examined, among Arab women as well: in 1980, the median years of schooling was 6.4 for Arab women, 7.5 for Arab men, and roughly 11 years for Jewish men and women.

90. As of the 1994/95 school year, attendance rates of 14-to-17-year-olds in the Jewish educational system were 92.6 per cent for boys and 99.6 per cent for girls. In the Arab sector during the same year, 65.7 per cent of boys and 69.2 per cent of girls were enrolled in educational programmes. In all sectors, attendance rates have increased dramatically over time. Approximately two thirds of all matriculation examinees are girls, and a higher percentage of girls than boys pass their matriculation exams.

91. Secondary education in Israel is made up of different educational tracks. In the eighth or ninth grade students are placed on either a general or technological/vocational track, and proceed to separate high schools accordingly. Within each general track, the students select specific courses of study, such as sciences or humanities, or a specific vocational field, such as electronics, biotechnology and so on. Most of the students who take their matriculation exams have studied in the general high schools, as matriculation

is a prerequisite for university education. As of 1985, 43.6 per cent of girls studied in the general track, while only 27.7 of boys did the same. Within the vocational tracks, machinery and electronics are almost exclusively male subjects, building and architecture are studied equally by men and women, and fashion and nursing/paramedical training are female-dominated fields, as are programmes for biotechnical engineers and technicians.

92. Everyone, regardless of gender, may choose to study or major in any subject in higher education. Opportunities are limited to the extent that certain departments have prerequisites such as a certain level of science matriculation, which many girls do not choose to take in high school. In 1995, 55 per cent of undergraduate university students in Israel, and over 50 per cent of graduate students, were women. The proportion of university degree recipients who are women is similar to the percentage of women students. At the doctoral level, 43.8 per cent of students are women. In the 1992/93 school year, 46.6 per cent of law students, 46 per cent of medical students, and 18.2 per cent of engineering and architecture students studying for a first degree were women. Women are highly represented in university programmes in education (84 per cent), the humanities (71.4 per cent) and the social sciences (59 per cent) while they are under-represented in technological fields (20 per cent). Women university students tend to receive their bachelor's degrees earlier than men (median age 26.0, compared to 27.6 for men), largely due to the fact that their mandatory army service is one year shorter than that of men. The median age for receiving master's degrees is virtually identical for men and women, and the median age for receiving doctoral degrees is a year lower for men than for women. In non-university institutions of higher education, women made up 64 per cent of students during the 1995/96 school year. More than three times the number of non-Jewish men receive higher education than do non-Jewish women.

Governmental review of legislation and practice affecting women

93. **Commission on the Status of Women**. The International Women's Year in 1975 triggered the formation of an ad hoc Commission on the Status of Women, appointed by then-Prime Minister Yitzhak Rabin, and headed by Ora Namir, who later became Minister of Labour and Social Affairs. The Commission's main function was to investigate the status of women in Israel and to present the Government with proposals for social, cultural, educational, economic and legal measures necessary to promote equality between men and women in Israel. The Commission's 1978 report included a list of 241 recommendations for reform, only some of which have been implemented.

94. **Women's status in the civil service**. The Israeli Government is the largest employer in Israel, and almost 60 per cent of civil servants are women. In 1989, a governmental commission investigating the civil service reported, among other things, on the status of women in the service, and concluded that discrimination against women is the main cause of their lower status in the service. To implement the commission's recommendations for the improvement of women's status in the service, a subcommittee was established (the Ben Israel Committee, after its Chairwoman) by the Ministry of Economics and Planning. In 1993, the subcommittee presented its reform proposals, which included specific provisions for ensuring women's participation in tender committees, and invalidating decisions of tender committees with no women

members; improving the functioning of the supervisors on the status of women in the different ministries; and securing firmer treatment of sexual harassment. In addition, the proposals include the publication of a worker's rights manual for women employees, the preparation and dissemination of information regarding the status of women in the service to Knesset committees and women's organizations; and the joint establishment of a Progressive Employer Award to be granted by the Na'amat women's organization, the Union of Industrialists and the Union of Local Authorities to the public employer demonstrating a commitment to the advancement of women. Most of these proposals were incorporated into the Civil Service Code, and are in the process of being implemented.

95. Other changes in the Civil Service Code include the changing of provisions regarding family members who may accompany employees on overseas missions on gender-neutral terms, thus giving men and women employees equal opportunities to participate in overseas work, and allowing women employees with small children to choose whether or not to work overtime. In 1985, the Government, following one of the recommendations of the Namir commission, decided that a supervisor on the status of women employees would be appointed in each government ministry. These supervisors are responsible for promoting equal opportunities for women employees, monitoring obligations for representation of women on all professional and tender committees, developing special tracks for promotion of women, increasing the representation of women in senior positions, handling gender discrimination and sexual harassment complaints, and preparing annual progress reports. Such supervisors have been appointed in most ministries.

96. Recently, the Civil Service Commissioner created a new position for a Supervisor-General on the advancement of women in the civil service, who reports directly to the Commissioner. In 1996, a new unit was established on the Commission, which is responsible specifically for hiring and promoting women in the civil service, with a particular view to increasing representation in senior positions. The new unit also supervises the implementation of affirmative action policy under the State Service (Appointments)(Adequate Representation) Law (Amendment No. 7), 5755-1995. This law obligates the Civil Service Commissioner to use all necessary means to achieve appropriate representation of both sexes in the civil service. Its provisions are read to all tender committees at the beginning of every tender deliberation, including the requirement that preference be given to the candidate of the less-represented sex when candidate's qualifications for the position are similar.

97. **The Prime Minister's Adviser on the Status of Women**. The Office of the Prime Minister's Adviser on the Status of Women, established in 1980, was initially given responsibility for advising the Prime Minister on all issues pertaining to women, and coordinating governmental actions in this regard. The office suffered from a dearth of funding until 1992, when the late Prime Minister Rabin abolished the Office of Prime Minister's Advisers altogether, including the Adviser on the Status of Women. In its place, he formed a steering committee to restructure the office of the Adviser and the function of the National Authority on the Status of Women, discussed below. Following the 1996 election, the Government appointed a new Adviser on the

Status of Women, with responsibility for organizing a campaign against family violence and drafting Israel's report on the March 1997 session of the Commission on the Status of Women, in the aftermath of the Beijing Conference.

98. A bill currently under consideration in the Knesset calls for the establishment of a National Authority on the Status of Women. Under the proposed legislation, the Authority will have a mandate to formulate policy regarding gender equality and the elimination of discrimination against women; to coordinate and promote cooperation between national Government, municipalities and other bodies regarding the promotion of the status of women; to advise ministries on the implementation of equality laws and of the Convention on the Elimination of All Forms of Discrimination against Women; to establish special programmes and services for women to promote gender equality; to create a research and public information centre; and to promote legislative measures for the advancement of women and the elimination of gender discrimination. The Knesset Committee for the Advancement of the Status of Women is now preparing the bill for its final readings, and it is expected to be enacted in the near future.

99. **The Knesset Committee for the Advancement of the Status of Women**. In 1992, a broad coalition of women Knesset members created the Committee for the Advancement of the Status of Women. This Committee has been instrumental in promoting important legislation bearing on women's status and in raising awareness of women's concerns. In January 1996, the Committee was granted the status of a permanent (standing) Knesset committee, with the following mandates: (a) to see to the advancement of women's equality in public representation, education and personal status; (b) to work toward the prevention of discrimination on the basis of sex or sexual orientation in all areas of life; (c) to reduce wage gaps in the economy and the labour force; and (d) to eliminate violence against women. The Committee is currently composed of 15 members, including 8 men, and has working subcommittees dealing with the advancement of women in the workplace, the advancement of Arab women, and personal status. Recently enacted legislation in which the Committee played a pivotal role includes, among others, the Equal Pay (Male and Female Employees) Law, 5756-1996; the State Service (Appointments) (Appropriate Representation) Law (Amendment No. 7), which introduces affirmative action into the civil service; the Prevention of Domestic Violence Law (Amendment No. 2), 5756-1996; and the Family Court Law, 5755-1995. Over 40 different legislative bills relating to the advancement of women's status have been enacted since the establishment of the Committee. The Committee has also used other parliamentary powers to pursue its mandate, such as the creation of the parliamentary investigative committee on the murder of women by their spouses. Furthermore, the Committee has been an important catalyst for activity on women's issues outside the Knesset, by maintaining close working relations with women's NGOs and with women in senior positions in business and academia. It thus serves as a forum where women's voices are heard, and for political mobilization on women's issues.

100. The Ministry of Labour and Social Affairs has a Division for Employment and Status of Women, which, among others, is involved in the development of child-care programmes, the supervision and subsidizing of child-care programmes operated by women's organizations, the provision of vocational training for women who are unskilled or who wish to enter non-traditional

fields of work, and the dissemination of information regarding women's rights, with a focus on employment. Other ministries have staff members designated as responsible for overseeing the status of women employees in that ministry as well as any activities of that ministry which engage women's issues more generally.

101. In 1994, the Union of Local Authorities in Israel appointed an Adviser on the Advancement of Women in Local Authorities, in an attempt to provide a mechanism for addressing women's concerns at the municipal level. The Adviser is responsible for establishing Women's Councils in each local council in Israel; 70 such Women's Councils have been created thus far, including 8 in Arab local councils. The Adviser is also involved in promoting legislation dealing with women's daily concerns at the municipal level, and cooperates closely with the Ministry of Labour and Social Affairs on issues such as shelters for battered women. The tasks of the local Women's Councils include coordination among all local women's organizations, implementation of educational programmes on gender equality, prevention of domestic violence and technological education for girls, improvement of day-care facilities, and provision of services for women with special needs such as single mothers, elderly women, immigrant women and Arab women. Each Women's Council is headed by a woman who also acts as the Adviser on the Status of Women to the head of the Municipal Council. Once again, the main obstacle facing the work of the local Women's Council is the absence of a dedicated budget, making the work of the councils largely voluntary.

Equal rights in the domestic sphere

102. Israeli law and practice regarding the equality between spouses, and between spouses and their children, are discussed under articles 23 and 24.

Impact of marriage on nationality

103. As discussed under article 2, the Nationality Law, 5712-1952, states that Israeli nationality may be acquired in one of four ways: by birth; under the Law of Return, 5710-1950; by residence in Israel; or by naturalization. Israeli citizenship laws do not differentiate between men and women. Both sexes have equal rights in regard to acquiring, changing or retaining their nationality. Neither the change of nationality by one member of a couple nor marriage to a non-citizen has any effect on one's citizenship. According to the laws relating to citizenship acquired by birth, both the father's and mother's citizenship carry equal weight.

104. Provisions in the Nationality Law dealing with the acquisition of citizenship by naturalization also uphold the principle of gender equality. Section 7 of the law provides that the spouse of a person who has applied for Israeli citizenship through the naturalization process may thus be granted citizenship even if he or she does not meet all of the statutory requirements for naturalization. Naturalization also confers citizenship on the minor children of the naturalized person who were residents of Israel at the time of his or her naturalization. However, if the minor citizen was a citizen of another country, and both parents were entitled to custody, but only one underwent the naturalization process, then the child will not obtain

citizenship if one of the parents declares his or her opposition thereto. In any case, these provisions do not distinguish between parents on the basis of gender.

105. Under a 1980 amendment to the Nationality Law, if either parent was an Israeli citizen at the time of his or her death, then any child born after that parent's death shall be entitled to acquire citizenship.

Article 4 - States of emergency

106. The State of Israel has remained in an officially proclaimed state of public emergency from 19 May 1948, four days after its founding, until the present day. The original declaration of a state of emergency was issued by the Provisional Council of State in the midst of the war with neighbouring States and the local Arab population that had begun several months prior to the declaration by Israel of its independence on 14 May 1948. Since then, the state of emergency has remained in force due to the ongoing state of war or violent conflict between Israel and its neighbours, and the attendant attacks on the lives and property of its citizens. Upon ratifying the Covenant, the State of Israel made a declaration regarding the existence of a state of emergency.*

107. Concurrently with the achievement of peace agreements between Israel and Egypt in 1979, between Israel and Jordan in 1994, and the recent agreements between Israel and the PLO, an internal debate regarding the necessity of a state of emergency, and the scope of powers granted to the executive branch thereunder, has culminated in the enactment by the Knesset of two Basic Laws

---

* The text of Israel's declaration, dated 3 October 1991, is as follows: "Since its establishment, the State of Israel has been the victim of continuous threats and attacks on its very existence as well as on the life and property of its citizens.

"These have taken the form of threats of war, of actual armed attacks, and campaigns of terrorism resulting in the murder of and injury to human beings.

"In view of the above, the State of Emergency which was proclaimed in May 1948 has remained in force ever since. This situation constitutes a public emergency within the meaning of article 4 (1) of the Covenant.

"The Government of Israel has therefore found it necessary, in accordance with the said article 4, to take measures to the extent strictly required by the exigencies of the situation, for the defence of the State and for the protection of life and property, including the exercise of powers of arrest and detention.

"Insofar as any of these measures are inconsistent with article 9 of the Covenant, Israel thereby derogates from its obligations under that provision."

which significantly modify both the constitutional mechanism for maintaining a state of emergency, as well as the scope of the executive branch's discretion in promulgating emergency regulations. In the framework of those new Laws, which are discussed further below, the state of emergency currently exists by force of the declaration of the Knesset in May 1997, which is valid for a period of up to 12 months.

108. During the period of the British Mandate, numerous emergency or defence regulations were enacted by the High Commissioner on specific matters such as prohibiting the manufacture of explosives, overseeing the Mandatory police, and regulating immigration into the country. In 1945, these earlier regulations were superseded by the enactment of the Defence (Emergency) Regulations, which granted the Mandatory authorities extremely broad powers for the purpose of quelling riots and insurgencies and maintaining public order. Among other things, these regulations enabled the destruction and sealing of houses, administrative detention, trial of civilians for security-related offences in special military courts, prohibitions on freedom of movement of individuals or the general public, deportation, censorship, expropriation of private property, illegalization and prosecution of hostile organizations, restriction of the use of telecommunications, and so on. As with most other Mandatory and Ottoman legislation that was in force on the eve of Israel's proclamation of independence, the Defence (Emergency) Regulations, 1945, remained in force upon the establishment of the State. With several notable exceptions - most prominently the power to deport civilians under Regulation 111, which was repealed in 1982, and the power of preventive or administrative detention under Regulation 112, which is now regulated by the Emergency Powers (Detention) Law, 5739-1979 - these regulations remain in force in Israel to the present day.

109. On 19 May 1948, Israel's Provisional Council of State enacted the Law and Administration Ordinance, 5708-1948, which created the new legislative and executive branches of the fledgling State, provided for the continued validity of previous laws and legal institutions, and transferred governmental powers held by Mandatory authorities. Section 9 of this Ordinance, which is quoted in full below, authorized the Provisional Council of State to declare a state of emergency, and gave ministers in the Provisional Government the power to enact emergency regulations for the purpose of protecting the State, public security and the maintenance of essential services and supplies:

> "9. (a) If the Provisional Council of State deems it expedient so to do, it may declare that a state of emergency exists in the State, and upon such declaration being published in the Official Gazette, the Provisional Government may authorize the Prime Minister or any other Minister to make such emergency regulations as may seem to him expedient in the interests of the defence of the State, public security and the maintenance of supplies and essential services.
>
> "(b) An emergency regulation may alter any law, suspend its effect or modify it, and may also impose or increase taxes or other obligatory payments.

"(c) An emergency regulation shall expire three months after it is made, unless it is extended, or revoked at an earlier date, by an Ordinance of the Provisional Council of State, or revoked by the regulation-making authority.

"(d) Whenever the Provisional Council of State thinks fit, it shall declare that the state of emergency has ceased to exist, and upon such declaration being published in the Official Gazette, the emergency regulations shall expire on the date or dates prescribed in such declaration."

As mentioned above, the Provisional Government declared a state of emergency on the same day that it enacted the enabling provision. Section 9 of the Law and Administration Ordinance remained in force until June 1996, when it was replaced by new constitutional arrangements regarding emergency powers in Basic Law: Government, which are discussed below.

110. A significant change in the scope of executive emergency powers has recently been made in the new version of Basic Law: Government, which entered into force in June 1996. This Basic Law repeals section 9 of the Law and Administration Ordinance, replacing it with new arrangements regarding the duration of and power to declare a state of emergency, as well as substantive limitations on the content and application of emergency regulations, which aim at protecting human rights. Under section 49 of the Basic Law, the official state of emergency no longer continues automatically until repealed. Rather, the Knesset may declare a state of emergency that will extend for up to one year; the Government may also declare a state of emergency, which may last for up to one week, until approval by the Knesset. In addition, emergency regulations are to be issued by the Government, rather than by individual ministers, except when there exists an urgent and critical need to enact such regulations and the Government cannot be convened, in which case the Prime Minister may issue such regulations or authorize another minister to do so. Under the new Basic Law, moreover, the validity of all emergency legislation, including that of previously enacted laws extending the force of emergency regulations under section 9 of the Law and Administration Ordinance, is now contingent upon the Knesset's decision whether to declare a new state of emergency at the end of each 12-month period, which the Knesset did in mid-1997. In addition, particular emergency legislation may be annulled by the Knesset, and ordinary emergency regulations expire after three months unless extended by law.

111. The new Basic Law (sect. 50) specifically provides that emergency regulations may not prevent persons from seeking redress therefrom in the courts, nor may they set retrospective punishments or allow injury to human dignity. In addition, no emergency regulations may be promulgated, nor may any powers, arrangements or measures be exercised thereunder, except to the extent required by the state of emergency. Although the Supreme Court has not yet had the opportunity to interpret the effect of these limiting principles on emergency legislation since the enactment of the new Basic Law, the clear intent of the Knesset was to circumscribe the powers of the executive branch

to impair enjoyment of fundamental human rights in a state of emergency, and to give the courts the necessary tools to enforce such curbs on executive discretion.

112. In Israel there are three principal types of legislation (statutes or regulations) which have application during a state of emergency. The first type consists of regulations enacted pursuant to the enabling legislation (i.e., until recently, section 9 of the Law and Administration Ordinance, and, since 1996, section 49 of Basic Law: Government) during periods when public security, the security of the State or the maintenance of supplies and essential services are seriously threatened, typically in time of war. For example, during the Gulf War in 1991, a series of emergency regulations were promulgated dealing with the maintenance of civil defence, the preservation of vital telecommunications capacities, the prohibition of firing employees due to their absence from work during the war, altering the school schedule, and the like. See, e.g., Emergency (Special Situation Period in Civil Defence) Regulations, 5751-1991; Emergency (Wireless Telegraph) Regulations, 5751-1991; Emergency (Telecommunications) Regulations, 5751-1991; Emergency (Prohibition of Termination of Employment during Special Situation in Civil Defence) Regulations, 5751-1991; Telecommunications (Installation, Operation and Maintenance) (Amendment) Regulations, 5751-1991; Emergency (Educational Institutions during Special Situation Period in Civil Defence) Regulations, 5751-1991. These regulations generally remain in effect for a brief period.

113. The second type of emergency legislation includes statutes which extend the validity of particular emergency regulations for a set period of time, or until the officially declared state of emergency ceases to exist. The regulations extended by this second type of emergency legislation deal with matters in which the need to safeguard public security, the security of the State or maintenance of supplies and essential services is of an ongoing nature, for example, regarding security at schools, regulating travel between Israel and other countries with which Israel is in an official state of war; and supervision of sea-going vessels. See, e.g., Emergency (Guarding of Educational Institutions) Extension Law, 5734-1974; Emergency (Departure Abroad) Regulations Extension Ordinance, 5708-1948; Emergency (Supervision of Sea-going Vessels) Extension Law, [Consolidated Version], 5733-1973.

114. Finally, several laws have effect during an officially declared state of emergency, although they are enacted as a normal statute, and not pursuant to the above-mentioned enabling provisions. As a formal matter, then, these laws are not emergency legislation, properly so-called; nor, as a rule, do they create arrangements which impair the enjoyment of rights under this Covenant. See, e.g., Supervision of Goods and Services Law, 5718-1957.

115. Over the past 50 years, government ministers have used their authority to enact emergency regulations in a broad array of matters. Though a complete discussion of all emergency regulations enacted during this entire period would well exceed the scope of this report, the following examples may serve to indicate the nature and variety of such regulations:

(a) Regulations allowing for uninterrupted operation of specific types of institutions, professions and industries declared "essential", such as the courts, various civil service positions, government companies, doctors and other health professionals, social workers, flour mills, the national telecommunications company, the sole electric utility company, the petroleum and gas industries, educational personnel, etc.;

(b) Regulations providing for security protection in the schools;

(c) Regulations requiring the registration of certain manufacturing equipment and allowing for its employment by the State in times of national emergency;

(d) Regulations relating to the use of sea-going vessels;

(e) Regulations to redress the effects of fluctuations in foreign exchange rates;

(f) Regulations raising the maximum age of reserve military service;

(g) Regulations providing for lodging certain types of workers in hotels;

(h) Regulations for preventing fires in agricultural areas;

(i) Regulations, which remained in effect only for several days, requiring the national broadcast authority, whose employees were on strike at the time, to air campaign broadcasts from various political factions in the period prior to Knesset elections;

(j) Regulations allowing police authorities to post stake-outs on roofs of private houses;

(k) Regulations regarding the treatment of goods not redeemed from the offices of customs authorities;

(l) Regulations reducing the amount of water allotted for agricultural, industrial and domestic use.

116. **Entrenchment of certain statutes against emergency legislation**. Many, but not all, Basic Laws contain a provision which makes them invulnerable to alteration, modification or suspension by emergency regulations.* As these entrenchment provisions are themselves generally not susceptible to change by emergency regulations, laws containing them are thus not susceptible to change by the executive branch. In other cases, such as in Basic Law: Human Dignity and Liberty, duly enacted emergency legislation may deny or restrict rights so long as such denial or restriction is for a proper purpose, and for a period and to an extent that is no greater than necessary.

---

* For example, see section 44 of Basic Law: Knesset, section 25 of Basic Law: President of the State, section 53 of Basic Law: Government, section 22 of Basic Law: Judiciary.

117. **Judicial review of ministerial discretion**. The scope of ministerial discretion in enacting emergency regulations, and in issuing orders pursuant to emergency legislation, admittedly has been quite broad. Any person injured by such orders or regulations may apply to the courts, and principally to the High Court of Justice, for relief against improper exercise of ministerial authority. Prior to the enactment of Basic Law: Human Dignity and Liberty, in 1992, and the entering into force of Basic Law: Government in June 1996, the extent of the Court's intervention in ministerial discretion under emergency legislation was generally rather limited, in view of the broad discretion granted by the general statutory enabling provision (sect. 9 (a) of the Law and Administration Ordinance), or by the specific statutory powers in cases of administrative detention and supervision of goods and services. It may be said, nevertheless, that the Court's jurisprudence in this regard developed over the years, culminating in a series of important decisions in which the Court nullified ministerial regulations or orders made under emergency powers. In *Poraz v. the Government of the State of Israel*, H.C.J. 2944/90, 44(3) P.D. 317, the High Court invalidated emergency regulations promulgated by the Minister for Construction and Housing, which bypassed existing statutory arrangements for building permits, in part on the ground that it was not necessary to employ emergency powers when it was possible to achieve the same purpose through the ordinary, if slower, legislative process.

118. Basic Law: Human Dignity and Liberty, enacted in 1992, which constitutes a charter of basic human freedoms, significantly enlarged the scope of judicial review of emergency regulations, and of official actions taken thereunder. Section 12 of this law provides as follows:

> "12. Emergency regulations shall not have the power to alter this Basic Law, to suspend temporarily its force or to make it subject to conditions; however, when a state of emergency exists in the State by virtue of a proclamation under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be promulgated by virtue of the said provision which may deny or restrict rights under this Basic Law, provided that such denial or restriction shall be for a proper purpose and for a period and to an extent that is no greater than required."

Among the rights protected by the Basic Law which are relevant for the non-derogation provisions of article 4 (2) of the Covenant, one may note the right to protection of life, body and dignity (sects. 2 and 4 of the Basic Law); the right to protection of personal liberty (sect. 5); and the right to privacy (sect. 7).

119. **Judicial review: administrative detention**. The Emergency Powers (Detention) Law, 5939-1979, gives the Minister of Defence and the Chief of General Headquarters of the Israel Defence Forces the authority to order the detention of a person if the Minister has reasonable grounds to presume that such detention is necessary for reasons of State security or public safety. The term of such detention, if ordered by the Minister of Defence, may be for a renewable period of up to six months; if ordered by the I.D.F. Chief of

General Headquarters, it may be only for 48 hours, and may not be renewed. The statute ensures ongoing judicial review of the administrative detention order. First, the detainee must be brought before the President of a District Court, and the Court may approve the detention order, annul it or shorten the period of detention (sect. 4 (a) of the above Law). If the detainee is not brought before the Court within 48 hours, then he must be released. In addition, the Law requires a reconsideration of the detention order by the Court at least every three months; once again, if such a hearing is not held within the three-month period, then the detainee must be released, unless there is another lawful ground for his detention. All decisions of the President of the District Court are appealable to a single judge of the Supreme Court. Under section 4 (c) of the Law, the President of the District Court "shall annul the detention order if it is shown that the reasons for issuing the order were not proper reasons of State security or public safety, or if it was issued in bad faith or was based on improper considerations". The Court hears appeals of administrative detention orders in closed-door session, and is empowered not to disclose to the detainee or his attorney evidence if the court is convinced that disclosure is likely to compromise State security or public safety.

120. Administrative detention orders are frequently challenged in the courts. In some cases, the courts have nullified the orders, either due to technical flaws or when the purpose of the detention is found not to be strictly related to requirements of national or public security (see, e.g., *A.D.A 1/82, Kawasme v. Minister of Defence, 36(1) P.D. 666*, in which the detention order was voided when its actual purpose was to detain the appellant until the end of legal proceedings). The courts have interpreted their authority under section 4 (c) of the Detentions Law to include a thorough examination of the validity of the purpose for the detention, the propriety of the Defence Minister's considerations, and the degree of necessity for such a limitation on personal freedom (*A.D.A. 2/86, Anonymous v. Minister of Defence, 41(2) P.D. 508*).

121. Since the early years of Israel's statehood, administrative detention has been employed against Jews and Arabs who, according to evidence submitted by the Minister of Defence, are active members of organizations which aim to undermine Israel's existence or the safety of its citizens through terror operations and by other means. In 1994, following the murder of 29 Muslim worshippers at the Patriarch's Tomb in Hebron, and following the assassination of Prime Minister Yitzhak Rabin in November 1995, tens of persons known or alleged to be active in incitement against the Arab population or the Government were placed in administrative detention, or had restrictions on their freedom of movement imposed on them under the Defence (Emergency) Regulations. The cases involving restriction orders are discussed under article 12 below.

122. Given the severity of the threat to human life posed by terror attacks, and of other actions aimed at undermining Israel's very existence, as well as the exceeding difficulty in preventing such acts, the policy of the State of Israel has been that its use of administrative detention, when efficient criminal prosecution or other measures are not possible, is consistent with

its obligations under article 4 of the Covenant, in light of the availability of substantive judicial review available under the restraining provisions of section 4 (c) of the Emergency Powers (Detentions) Law and section 12 of Basic Law: Human Dignity and Liberty. Israel's employment of administrative detention is not done in a manner that amounts to discrimination solely on the basis of race, colour, sex, language, religion or social origin. The de facto discrepancy between the numbers of administrative detainees from different ethnic groups clearly derives from the inter-ethnic nature of the violent conflict that has attended Israel's entire life as a State. So long as the actual purpose of administrative detention orders, based on evidence reviewed by the President of the District Court, is to protect national security or public safety, then the de facto discrepancy in the numbers of detainees, does not, in itself, entail impermissible discrimination.

123. **Limitations on emergency powers**. The larger question surrounding the discussion of Israel's emergency legislation is whether, and to what extent, the formal state of emergency may be ended or modified. Emergency legislation was initially intended to enable maintenance of crucial services and public order when a state of war or violent conflict might prevent or seriously impair the normal operation of governmental institutions and services; indeed, as mentioned above, section 9 of the Law and Administration Ordinance was enacted in precisely such circumstances. Israel's history, however, has been rather anomalous in this regard: on the one hand, the State and its citizens have been subjected without cease to a grimly real existential threat, to an ongoing state of war with some of its neighbours whose policies still aim at Israel's destabilization or destruction, to campaigns of political violence which continue to exact a dreadful toll, and to full-scale armed conflict six times in nearly 50 years. On the other hand, aside from those periods of all-out war, Israel's civil and governmental institutions generally function uninterruptedly in normal fashion in the midst of the continuing conflict. As a matter of political reality, Israel's need for a formal state of emergency will abate when it succeeds in concluding and implementing formal peace arrangements in the region.

Article 5 - Non-derogable nature of fundamental rights

124. As mentioned above under article 2, the Covenant has not been made a part of internal Israeli law by Knesset legislation. Under Israeli doctrine regarding the enforceability of conventional international law, as articulated in decisions of the Supreme Court (see, e.g., C.A. 25/55, *Custodian of Absentee Property v. Samra et al.*, 10 P.D. 1825, 1829; H.C.J. 606/78, *Ayub v. Minister of Defence*, 33(2) P.D. 113), the courts may consider and interpret the provisions of international human rights covenants when a claim is made that internal law is in violation of Israel's obligations under such covenants, but the concrete disposition of rights in any particular case is based on principles contained in Israel's internal law. As a formal matter, then, the provisions of the Covenant cannot be invoked in any judicial proceeding to justify any restriction of or derogation from existing rights granted under Israel's internal law. In several instances, the Supreme Court has looked to international human rights covenants, including the present Covenant, as a potential indicator of *customary* international law, which is considered part of Israel's internal law. See, e.g., Cr.A. 174/54,

Stampfer v. Attorney-General, 10 P.D. 5, 15. But in no instance has the Court determined that the custom reflected in international human rights instruments justifies limitation of existing rights.

125. During the course of Israel's life as a State, the courts have built an edifice of human rights founded on the fundamental principle of statutory interpretation under which human rights must be given their full weight when they come into conflict with other legitimate values or interests, and that only when the competing interest is at least of equal weight with the human right, and it is impossible to realize both of them, may the human right be impaired. (H.C.J. 73, 87/53, *Kol Ha'am v. Minister of Interior*, 7 P.D. 871; H.C.J. 680/88, *Schnitzer v. Chief Military Censor*, 42(4) P.D. 617). The principle of non-derogation from human rights was codified in the limitation clause (sect. 8) of Basic Law: Human Dignity and Liberty, which prohibits any restriction of the rights articulated therein except by a statute which befits the values upheld by the State of Israel, and is intended for a proper purpose, and such derogation must be only to an extent no greater than necessary. These firmly entrenched principles of narrow construction of any legislation or official act tending to impair human rights are binding on all official authorities. By their nature, they are antithetical to any derogation from existing rights based on the argument that the Covenant does not recognize such rights or recognizes them to a lesser extent.

Article 6 - Right to life

Measures to reduce the threat of war

126. The State of Israel has made diplomatic achievements of historic importance aimed at reducing the state of war and violent conflict with other States in the region and with its Palestinian Arab neighbours. The peace agreement signed with Egypt in 1979, the peace agreement with the Hashemite Kingdom of Jordan signed in 1994, and the series of agreements with the PLO, including the Declaration of Principles on Interim Self-Governing Arrangements signed in Washington, D.C., on 13 September 1993, and the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed in Washington, D.C., on 28 September 1995; are the major landmarks in Israel's pursuit of comprehensive arrangements that will ultimately eliminate the threat of war in the region. These bilateral agreements, and the larger process of which they form a part, bear a crucial import for the fulfilment of the provisions of this article. Israel's support of United Nations peacekeeping forces in Lebanon, in the Golan Heights and in the Sinai Peninsula may also be noted in this regard.

Reduction of infant mortality, epidemics and malnutrition

127. Under the National Health Insurance Law, 5755-1995, all residents are granted basic health care by right, regardless of ability to pay. Health care is generally organized through several health funds. In addition, the Ministry of Health and municipal governments subsidize health care for infants at drop-in mother-and-child-clinics, called *tipat halav*, which provide basic care and monitoring of the infant's development. Recent statistics indicate that over 90 per cent of infants under one year of age, in all sectors of the population, receive a basic battery of immunizations. During the years 1993

to 1995, between 91 and 94 per cent of Jewish infants, and between 93 and 98 per cent of non-Jewish infants were immunized against diphtheria, pertussis, tetanus, measles and poliomyelitis.

128. Israel's infant mortality rate fell by almost half between 1983 and 1996, when the rate stood at 6.8 deaths for every 1,000 live births (5.5 deaths among Jewish newborns, 9.9 deaths among non-Jewish newborns). The precipitous decrease in infant mortality over the last quarter decade, and the causes for such deaths, are shown in the following tables:

Table 3: Infant mortality, 1989-1995

	Total	Jews	Non-Jews
1989	10.1	8.2	14.7
1990	9.9	7.9	14.9
1991	9.2	7.2	14.2
1992	9.4	7.5	14.3
1993	7.8	5.7	12.8
1994	7.5	5.7	11.5
1995	6.8	5.6	9.6

Table 4: Average infant mortality, 1970-1995

Period	Number of infant deaths per 1,000 live births
1970-1974	21.9
1980-1984	14.4
1985-1989	10.9
1990-1994	8.8
1991-1995	8.1

Table 5: Infant mortality (rate per 1,000 live births) by religion and age of neonate at death, 1990-1994

	Total		Early neonatal mortality 0-6 days		Late neonatal mortality 7-27 days		Post-neonatal mortality 28-365 days	
	Rate	Per cent	Rate	Per cent	Rate	Per cent	Rate	Per cent
Total	8.8	100	4.1	46.6	1.4	15.9	3.2	36.4
Jews	6.8	100	3.6	52.9	1.2	17.6	2.0	29.4
Non-Jews	13.5	100	5.3	39.2	1.9	14.1	6.3	46.7

129. Most cases of infant mortality occur within the first week of life. As the table above indicates, despite the dramatic drop in infant mortality in both the Arab and the Jewish sectors of the population, there remains a significant gap between the infant mortality rates in the Arab and Jewish sectors. Statistical analysis completed in 1992 regarding infant mortality rates in municipalities around the country found that the nine cities with the highest infant mortality rates (ranging from 16.8 to 24.6 per cent) were localities in which the majority of the population is Arab. A breakdown of infant deaths according to recorded causes generally parallels the substantial decline in overall infant mortality and indicates a lingering discrepancy in the frequency of certain particular causes between the Jewish and non-Jewish populations. As may be discerned from the following table, the frequency of non-Jewish infant deaths due to intestinal infectious diseases and pneumonia declined most dramatically over the 25-year period between 1970 and 1995, from a level several times higher than that among the Jewish population to essentially the same level. During the same period, the rate of infant deaths caused by congenital abnormalities, while decreasing 35 per cent in the non-Jewish population, remained substantially higher than that in the Jewish population, which declined 61 per cent over the same period.

Table 6: Infant deaths, by population group and cause

Cause of death	1970-1974	1980-1984	1985-1989	1990-1994
Jews Total	18.6	11.8	8.8	6.8
Intestinal infectious diseases	0.6	0	0	
All other infectious and parasitic diseases	0.4	0.2	0.1	0.1
Pneumonia	1.2	0.3	0.2	0.1
Congenital anomalies	4.4	2.8	2.3	1.7
Other causes of perinatal mortality	9.9	5.8	4.4	3.6
External causes	0.3	0.2	0.4	0.2
All other and unspecified causes	1.8	2.4	1.6	1.2
Arabs and others Total	32.1	22.6	16.8	13.5
Intestinal infectious diseases	4.8	0.2	0.3	0.1
All other infectious and parasitic diseases	1	0.9	0.5	0.3
Pneumonia	4.4	1.8	0.6	0.2
Congenital anomalies	6.5	4.9	5.4	4.2
Other causes of perinatal mortality	10	7.3	5.3	4.3
External causes	0.7	0.6	0.8	0.5
All other and unspecified causes	4.7	6.8	4	3.8

Source: CSB, SAI 1996.

130. The mortality rate of Jewish female newborns and infants during the first year of life has been consistently lower than that of their Jewish male counterparts. In the non-Jewish sector, however, the average mortality rate of female infants passed that of male infants during the years 1989-1993, and has remained consistently higher than the mortality rate of non-Jewish male infants between their second and twelfth month of life. To combat infant mortality, the Ministry of Health undertakes widespread information campaigns, through its Public Health Services, to inform the population of risk factors for congenital defects, such as marriage between close relatives. In addition, the National Insurance Institute provides benefits to every woman who gives birth in a hospital, where the risk of perinatal mortality is lower. Israel's labour laws allow a pregnant woman to be absent from work for prenatal care, including for high-risk pregnancies, and nursing mothers are allowed to leave their workplace during the workday in order to feed their newborns, as discussed under article 24.

131. On the following pages is the table presenting main indicators of physical and mental health indicators for the Israeli population between 1980 and 1995, including live births, infant mortality, new cases of common diseases, hospital discharges, and other indicators.

Environmental pollution

132. **Water pollution**. Because water is scarce in Israel, considerable efforts are made to prevent water pollution, and effluents are recycled for secondary use, primarily in the agricultural sector. Standards of effluent quality are strictly monitored to prevent damage to public health and to crops. Water for domestic use is inspected and tested for bacteria and unwanted chemicals in compliance with regularly updated national standards and the recommendations of the World Health Organization. In 1993 and 1994, only 4 per cent of all test results indicated a possibility of contamination. Most households dispose of sewage through a central sewage system; some smaller settlements use septic tanks and cesspools, but they are gradually being linked to the central sewage system.

133. **Air pollution**. The main sources of air pollution in Israel are from energy production, transport and industrial manufacture. A new programme for the control of air quality was drawn up in 1994, to prevent air pollution through the integration of physical planning, monitoring, intermittent control systems, legislation and enforcement, reduction of pollution sources and the reduction of pollutant automobile emissions.

134. Israel's energy economy is based on fossil fuels, mainly oil and coal. Data on the amount of pollutants emitted into the atmosphere from fuel combustion show significant declines in levels of sulphur oxides and lead, increased emissions of carbon dioxide, carbon monoxide, nitrogen oxides and hydrocarbons, and no significant change in concentrations of suspended particulate matter.

Table 7. Selected HFA indicators for Israel

Indicator title	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
1. Demographic and socioeconomic																
Mid-year population, total	3,879,000	3,949,700	4,026,700	4,076,200	4,159,100	4,232,900	4,298,800	4,368,900	4,441,600	4,518,200	4,660,100	4,946,200	5,123,500	5,261,400	5,399,300	5,539,700
Mid-year population, male	1,938,300	1,973,000	2,010,800	2,011,600	2,075,700	2,112,300	2,144,600	2,179,000	2,215,100	2,253,200	2,321,000	2,458,300	2,543,000	2,609,400	2,675,800	.
Mid-year population, female	1,940,700	1,976,700	2,015,900	2,026,000	2,083,400	2,120,600	2,154,200	2,189,900	2,226,500	2,265,000	2,339,100	2,487,900	2,580,500	2,652,000	2,723,500	.
Live birth, total	93,484	93,308	96,695	98,724	98,478	99,376	99,341	99,022	100,454	100,757	103,349	105,725	110,062	112,330	114,543	117,182
Live birth, male	48,144	47,204	49,566	50,838	50,914	50,911	50,936	50,559	51,603	51,638	53,013	54,141	56,603	57,775	58,855	60,155
Live birth, female	45,340	46,104	47,129	47,886	47,564	48,465	48,405	48,463	48,851	49,119	50,336	51,584	53,459	45,555	55,688	57,027
Total fertility rate	3.14	3.06	3.12	3.14	3.13	3.12	3.09	3.05	3.06	2.90	2.80	2.80	2.70	2.80	2.90	.
% Unemployed persons, total	5	5	5	5	6	7	7	6	6	9	10	11	11	10	8	6
Annual rate of inflation	133	102	132	191	445	185	20	16	16	21	18	18	9	11	15	8
GNP, US$ per capita	5,423	5,746	5,968	6,526	5,977	5,474	6,677	7,881	9,660	9,633	10,958	11,766	12,589	12,346	13,580	15,406
GDP, US$ per capita	5,615	5,887	6,151	6,729	6,240	5,699	6,922	8,140	9,911	9,887	11,223	11,987	12,822	12,522	13,752	15,660
GDP, PPP$ per capita	6,922	7,756	8,269	8,813	9,221	9,807	9,947	10,728	11,339	11,794	12,647	13,288	13,942	14,346	15,205	16,273
2. Health status																
Number dead borns fetuses, 1000 + grams	422	504	482	506	469	459	423	457	453	418	343	396	409	.	.	
Number of deaths, 0 - 6 days, 1000 + grams	.	385	328	380	370	321	325	317	326	280	293	258	242	204	208	193
Number of livebirths, 1000 + grams	.	91,205	94,224	96,765	96,157	97,248	97,637	97,801	99,119	99,406	101,283	104,182	107,132	109,149	111,391	113,993
Number of deaths, 0 - 6 days, 500 + grams	.	629	550	608	575	551	525	522	469	461	460	414	408	339	365	331
Number of deadborn fetuses, 500 + grams	455	547	529	539	509	524	478	517	515	469	381	448	458	.	.	.
New cases, tuberculosis	249	227	232	222	257	368	239	184	226	160	234	505	345	419	343	392
New cases, hepatitis - total	3,924	4,525	3,146	3,898	4,965	4,558	3,208	2,058	2,813	2,452	2,650	1,751	1,353	3,547	3,891	2.308
New cases, hepatitis - A	.	.	.	.	.	.	.	.	.	.	.	.	1,037	3,041	3,483	2,165
New cases, hepatitis - B	.	.	.	.	.	.	.	.	.	.	.	.	139	138	132	69
New cases, syphilis	.	.	.	.	122	160	54	32	41	45	.	.	.	156	118	.
New cases, gonococcal infections	.	.	.	.	644	674	424	127	135	146	0	0	0	0	0	0

Cont

Indicator title	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
New cases, pertussis	19	25	62	78	7	24	47	96	7	260	189	35	99	138	71	59
Number of new cases, measles	215	228	7,864	129	137	3,005	1,951	438	178	29	212	991	66	141	1,565	28
Number of new cases, malaria	.	.	.	.	.	.	36	94	268	251	183	67	213	58	26	45
Number of new cases, diphtheria	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0
Number of new cases, tetanus	2	3	3	2	2	3	1	1	3	1	0	5	0	2	1	1
Number of new cases, acute poliomyelitis	11	8	5	4	1	2	0	2	16	0	0	0	0	0	0	0
Number of new cases, congenital rubella	.	.	.	.	.	.	0	2	.	.	.	0	6	2	1	0
Number of new cases, neonatal	0	1	2	1	0	0	0	1	2	1	0	0	0	0	0	0
Number of new cases, rubella	881	451	602	2,302	7,189	556	284	4,220	1,718	334	99	437	2,145	104	62	46
Number of new cases, mumps	3,041	5,956	5,092	3,904	6,584	2,113	1,052	2,579	6,999	891	364	349	676	895	891	117
Estimated cumulative cases, HIV seropositive	.	.	.	.	.	.	.	.	.	.	.	.	.	.	2,000	2,000
New cases, clinically clinically diagnosed AIDS	.	0	2	8	5	10	25	19	24	34	45	37	39	55	32	53
Hospital discharges: infectious and parasitic diseases	.	.	.	.	.	.	.	22,798	.	.	.	.	.	.	30,245	.
Hospital discharges: all cancers	.	.	.	.	.	.	.	30,632	.	.	.	.	.	.	54,374	.
Number of new cases of cancer, all sites, total	8,866	8,942	8,980	8,663	9,785	9,930	10,106	10,088	10,165	10,987	12,253	13,109	13,354	14,072	.	.
Number of new cases of cancer, all sites, male	4,400	4,409	4,393	4,273	4,794	4,883	4,961	4,992	4,878	5,283	5,820	6,117	6,389	6,694	.	.
Number of new cases of cancer, all sites, female	4,466	4,533	4,587	4,390	4,991	5,047	5,145	5,096	5,278	5,704	6,433	6,992	6,963	7,378	.	.
Number of cases, malignant neoplasms, total	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.

Cont.

Indicator title	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Number of cases, malignant neoplasms, male	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Number of cases, malignant neoplasms, female	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Number of new cases of trachea/ bronchus/lung caner, total	718	715	757	755	858	883	792	870	829	937	946	949	905	987	.	.
Number of new cases of trachea/ bronchus/lung caner, male	536	532	565	543	637	647	554	654	601	667	692	680	661	700	.	.
Number of new cases of trachea/ bronchus/lung caner, female	182	183	192	212	221	236	238	216	228	270	254	269	244	287	.	.
New cases, cancer of the female breast	1,174	1,152	1,243	1,128	1,317	1,289	1,360	1,305	1,409	1,616	1,811	2,005	2,049	2,153	.	.
New cases, cancer of the cervix	64	82	86	85	66	95	79	91	97	124	118	117	148	139	.	.
Number of cases, diabetes mellitus	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Number, mental health patients in hospital, 365 + day	6,163	6,106	6,141	6,102	5,977	5,854	5,606	5,285	5,076	5,014	4,951	4,865	4,812	4,824	4,771	4,578
Number of new cases of mental disorders	4,548	4,486	3,962	3,570	3,812	3,485	3,124	3,115	2,933	3,196	3,293	3,558	3,517	3,699	3,714	4,141
Number of new cases of alcoholic psychosis	13	5	30	31	39	28	22	26	29	23	27	35	38	35	45	51
Number of cases, mental disorders	8,678	.	.	8,164	8,059	7,780	.	7,167	7,036	.	6,877	.	6,867	6,866	6,949	6,846
Hospital discharges: diseases of circulatory system	.	.	.	.	.	.	.	64,876	.	.	.	.	.	.	102,302	.
Hospital discharges: ischaemic heart disease	.	.	.	.	.	.	.	31,127	.	.	.	.	.	.	47,439	.
Hospital discharges: cerebrovascular diseases	.	.	.	.	.	.	.	7,365	.	.	.	.	.	.	12,425	.
Hospital discharges: diseases of respiratory system	.	.	.	.	.	.	.	41,060	.	.	.	.	.	.	65,368	.
Number of cases, chronic obstructive pulmonary diseases	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.

Cont.

Indicator title	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Hospital discharges: diseases of digestive system	.	.	.	.	.	.	.	42,879	.	.	.	.	.	.	63,786	.
Hospital discharges: diseases musculoskeletal & connect tissue	.	.	.	.	.	.	.	14,708	.	.	.	.	.	.	26,280	.
Hospital discharges: injury and poisoning	.	.	.	.	.	.	.	37,069	.	.	.	.	.	.	55,576	.
Absenteeism due to illness, days per person per year	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Newly granted invalidity (disability) cases	.	.	.	.	.	.	.	.	.	13,445	14,117	11,659	18,176	20,667	20,801	15,516
Number, persons receiving social benefits due to disablement	.	.	.	.	.	.	.	.	.	108,499	111,702	113,931	118,401	125,436	132,618	140,089
% of disabled regular occupation, 15 - 64 years	.	.	.	.	.	.	.	21	.	.	.	.	.	.	.	.

135. In 1994, 63 air quality monitoring stations were operating in Israel. All of these stations monitor sulphur dioxide, most monitor nitrogen oxides and particulate matter, and a few monitor ozone and/or carbon monoxide. Airborne chemicals at hazardous waste disposal sites are monitored. The limited information available indicates that sulphur dioxide levels are mostly below regulation limits, nitrogen dioxide is significantly above the limit in some areas, and ozone levels in most places exceed recommended limits.

136. Recognizing that its current monitoring network needs to be augmented to formulate a national air quality management programme, Israel has recently prepared a preliminary programme for a multi-million-dollar national air monitoring system with a central data storage and display centre. To implement this national programme, some 50 monitoring stations are planned, in addition to the 63 currently in operation. The network is to be constructed over a three-year period.

Basic Law: Human Dignity and Liberty

137. The right to life is enshrined in sections 2 and 4 of Basic Law: Human Liberty and Dignity, which provide:

> "...
>
> "2. There shall be no violation of the life, body or dignity of any person.
> "...
>
> "4. All persons are entitled to protection of their life, body and dignity."

Under the limitation clause of the Basic Law (sect. 8), the above rights cannot be impaired except by a statute which is intended for a worthy purpose, which befits the values of the State of Israel, and which limits the right to an extent no more than required.

Legislation directly or indirectly prohibiting deprivation of life

138. The Penal Law, 5737-1977, contains several specific sections prohibiting actions which result or are intended to result in loss of life, principally the following:

(a) Manslaughter (sect. 298) - maximum penalty 20 years' imprisonment;

(b) Murder (sect. 300) - life imprisonment;

(c) Procuring or abetting suicide (sect. 302) - maximum 20 years' imprisonment;

(d) Infanticide (sect. 303) - maximum 5 years' imprisonment;

(e) Causing death by negligence (sect. 304) - maximum three years' imprisonment;

(f) Attempted murder (sect. 305) - maximum 20 years' imprisonment;

(g) Written threat to murder (sect. 307) - maximum 7 years' imprisonment;

(h) Carrying, selling, importing or exporting firearms without a licence (sect. 144) - maximum 3 or 15 years' imprisonment;

(i) Carrying a knife outside of one's home without showing a lawful purpose (sect. 186) - maximum 5 years' imprisonment;

(j) Selling, manufacturing or importing a knife for a purpose other than use in a profession, labour, business, home or other lawful use (sect. 185) - maximum 7 years' imprisonment;

(k) Battery with aggravated intent (including causing an explosion or sending an explosive to a person (sect. 329) - maximum 20 years' imprisonment;

(l) Placing an explosive with intent to cause injury (sect. 330) - maximum 14 years' imprisonment;

(m) Reckless endangerment of a person's life on a transportation route (sect. 332) - maximum 20 years' imprisonment;

(n) Endangerment of life through use of a poisonous substance (sect. 336) - maximum 14 years' imprisonment;

(o) Reckless and negligent acts calculated to cause risk to human life (sect. 338) - maximum 3 years' imprisonment.

For certain offences, such as rape and battery, the maximum punishment is doubled if a firearm or other weapon is used during its commission. In general, solicitation, conspiracy, and complicity in the commission of any of the above offences are subject to a lesser punishment, usually half of the maximum punishment in the case of actual commission, except if the penalty for the offence is death or mandatory life imprisonment, in which case complicity in or attempt to solicit commission of the offence is punishable by 20 years' imprisonment; and if the penalty for the offence is life imprisonment, then the penalty for complicity or attempt to solicit is 10 years' imprisonment.

139. Under the Aviation (Offences and Punishment) Law, 5731-1971, a person who acts with intent to endanger human life on an aeroplane, or to cause injury to the person, to the aeroplane or any property on the aeroplane, is punishable by 20 years' imprisonment; if the act results in loss of life, the punishment is mandatory life imprisonment (sect. 18). The same penalties are imposed on a person who endangers safety at an airport in certain circumstances (sect. 18 A of the Law). Under this law, conspiracy, attempt, or solicitation to commit the above offences, or complicity in the commission thereof, bear the same punishment as if the offender actually committed the offence himself.

140. The Defence (Emergency) Regulations, 1945 define certain specific offences regarding illegal use or possession of firearms, use of

explosives or inflammable objects with intent to kill or cause grievous bodily harm, and illegal possession of such explosives or inflammable objects (Regulations 58-59), which overlap similar provisions in the Penal Law. Finally, the Prevention of Terror Ordinance, 5708-1948, punishes activity, membership in or support of a terrorist organization, which is defined as "a group of persons which employs acts of violence which are likely to cause the death or injury of a person, or threats of such acts of violence."

Incidence of murder, attempted murder, manslaughter, and negligent homicide

141. The following table is a compilation of the incidence of reported cases of the four types of offence involving deprivation of life. It should be noted that the percentage of cases in which the suspect was apprehended is correct as of December 1995, except for the figures for 1996, which are updated to June 1996.

Table 8. Incidence of offences involving deprivation of life, 1991-1996 (first half)

Offence	Murder	Attempted murder	Manslaughter	Negligent homicide
1991				
Reported cases	100	81	6	66
% apprehended	61%	81.5%	100%	89.4%
1992				
Reported cases	91	112	19	53
% apprehended	73.6%	79.5%	94.7%	84.9%
1993				
Reported cases	96	100	10	88
% apprehended	77.1%	84%	90%	79.5%
1994				
Reported cases	114	122	11	72
% apprehended	75.4%	77.0%	63.6%	73.6%
1995				
Reported cases	112	139	16	66
% apprehended	71.4%	48.2%	87.5%	84.8%
1996 (Jan.-May)				
Reported cases	53	50	3	14
% apprehended	50.9%	48.0%	-	21.4%

Deprivation of life by law enforcement officials

142. Law enforcement officials in Israel, like nearly all public servants* are subject to the provisions of the criminal law, as well as to internal disciplinary regimes for unlawful actions. In addition to the general criminal prohibitions noted above, the Penal Law, 5737-1977, explicitly forbids a public servant from using force or violence, or ordering the use thereof, against a person in order to extract from that person or another person in whom he has an interest, a confession to a crime or information regarding that crime (277 (1)). Several parallel legal institutions function to investigate cases of deprivation of life by law enforcement officials, to impose liability and punish those found responsible, and to provide compensation for victims; as these institutions deal not only with deprivation of life, but with all forms of violence and mistreatment by public officials, they are discussed under article 7 as well as under this article.

Disciplinary and criminal proceedings

143. In any case in which the actions of law enforcement officials or security forces result in death, an internal investigation is conducted by the authority involved, regardless of any other external proceedings that may be initiated. If basis is found for disciplinary or criminal violations, then the case is referred to the appropriate authorities for investigation and trial, as described below and under article 7.

144. Disciplinary and criminal proceedings may also be initiated by complaints filed by citizens, typically victims of alleged mistreatment, members of their families or their legal representatives. Disciplinary investigations and trials are regulated by law in the case of the Israel Police, the Prisons Service and the Israel Defence Forces. Criminal matters relating to alleged offences by soldiers in the Israel Defence Forces are investigated and tried under the Military Justice Law, 5715-1955, including for the offences of murder and manslaughter. Until 1992, criminal investigations against public servants in the Israel Police and the General Security Service were carried out by internal investigations departments. To remedy the problems inherent in such an arrangement, an external body, the Department for Investigation of Police Misconduct (DIPM), was set up within the Ministry of Justice. This department has authority over investigations of suspected criminal activity by personnel in the Israel Police (including the Border Police) and the General Security Service, the liability for which bears a penalty of more than one year's imprisonment. To the extent that the Department's investigation reveals evidence of criminal liability, the Department transfers the case to a representative of the District Attorney or State Attorney's Office with a recommendation to file a criminal indictment.

---

* The only exceptions are judges, who are exempt from criminal and civil liability for matters relating to the performance of their office during the term of their tenure, and members of the Knesset, who are immune from legal proceedings in respect of acts relating to the performance of their mandate and may not be prosecuted for other acts, unless the Knesset votes to relieve them of their immunity in respect of the charge in question (Knesset Members (Immunity, Rights and Duties) Law, 5711-1951).

From the inception of the DIPM in 1992 until mid-1997, 10 criminal indictments were filed against police officers in cases involving causing of death while on duty. The overall statistics are discussed under article 7 below.

145. In the event that the Department for Investigation of Police Personnel closes a criminal investigation without indictment, a person aggrieved by the decision may appeal to the State Attorney's Office. Up until October 1995, out of 120 such appeals, one was accepted.

146. Under Israeli law, public servants may be exempt from criminal liability in certain circumstances. For instance, a police officer is exempt from criminal (and civil) liability in connection with carrying out an arrest which, in the opinion of the presiding court, was carried out in good faith and for the sake of public order (sect. 44 of the Criminal Procedure (Arrest and Search) Ordinance [New Version], 5729-1969). Similarly, a police officer may be exempt from criminal liability, including for causing death, for actions taken through reasonable use of force under orders from a senior commanding officer in dispersing a riotous disturbance by a group of people which threatens public safety or causes public terror, if the commanding officer has duly notified the group of his presence and ordered them to disperse and they continue in their reckless disturbance (sects. 153-154 of the Penal Law, 5737-1977). The use of force by the police officer in such circumstances is regulated, however, by the rules for the use of firearms, discussed in paragraph 148 below.

147. In addition, several affirmative defences to criminal liability may be claimed by police officers or members of the security forces on trial. Under section 6 of the Police Ordinance [New Version], 5731-1971, a police officer may be relieved of criminal liability if he acted properly under an order issued by a court or by the Chief Execution Officer, who presides over proceedings for execution of judgements. Generally, claims of self-defence (sect. 34 (10) of the Penal Law) or "justification" emanating from a legal obligation or authorization to perform the act involved (sect. 34 (13) of the Penal Law) are not infrequently invoked in cases involving the use of force which results in death.

Open-fire regulations

148. The rules of engagement applicable to the Israel Police are contained in various regulations and standing orders. If a police person acts in violation of these regulations, he or she may be subject to a disciplinary trial pursuant to the Police Ordinance; if as a result of the violation of the open-fire regulations, a criminal offence is committed, including manslaughter, murder or negligent homicide, the police officer may be tried in normal criminal proceedings.

149. The rules of engagement for the Israel Police authorize use of firearms in three sets of circumstances: in carrying out an arrest of a person suspected of a severe felony; in dispersion of reckless disturbances or riots; and as a means of protecting against imminent danger to human life or injury. The regulations specify that firearms are to be used cautiously, only as a last resort, and only in circumstances in which the danger emanating from the use of firearms does not bear a reasonable relation to the other danger which

the police officer is trying to prevent. The police officer must assess the degree of necessity of the use of firearms at each stage of a particular event, and must refrain from using firearms immediately once the need to use them has ceased.

150. **Use of firearms in carrying out an arrest**. Under the police open-fire regulations, firearms may not be used in carrying out an arrest unless all of the following conditions have been met:

(a) The arrest relates to suspected commission of a felony, and either the felonious act or the perpetrator thereof significantly endangers the life or bodily integrity of a person;

(b) There is no other way to carry out the arrest;

(c) The use of firearms will not significantly endanger the lives or bodily integrity of passersby and innocent persons.

Once all of the above conditions have been met, the police officer must give prior warning of the intention to open fire. To the extent possible, such warning is to be given in two stages: first, by calling over a loudspeaker, if possible in the language understood by the suspect; then, if the police officer has grounds to believe that the suspect heard and understood the warning but did not stop, the officer may fire a warning shot in the air, taking adequate caution to prevent possible injury to persons or property. Police procedure No. 90.221.065, which further explains the open-fire regulations in operational terms, specifies the warnings to be given in Hebrew, Arabic and English. The police officer may be relieved of the duty to issue a warning when there is a serious, imminent danger to the life or bodily integrity of the officer or any other person, such as when the suspect is clearly identified as carrying firearms. If firearms are ultimately used, the police officer bears a further duty to use them with maximum caution, in a manner that will result in minimum injury to persons or property. Single shots may be fired, only at the legs of the suspect; it is forbidden to aim or shoot at the suspect's upper body.

151. **Firing in the air to disperse rioters**. In the case of a riot, which is defined as a group of people who have assembled to commit a crime, or for some other common purpose, and who behave in a manner that gravely violates public safety or order, firearms may not be used against people, but rather only to fire in the air. Firing in the air is prohibited unless the following conditions are met:

(a) A senior police officer orders the rioters to disperse, but they do not do so within a reasonable time from the giving of the order, and they continue severely to violate public order or safety,

(b) A warning is given regarding the impending use of force to disperse the riot, and less severe methods of force, such as water cannons or tear gas, have been used to no avail.

Firing in the air in such circumstances must, again, be done with maximum caution so as to prevent to the extent possible any injury to persons or property. The firing must be authorized by the commanding officer, and must

be done in single shots. However, if, in the course of the riot, there arise lawful grounds to arrest a particular rioter, or circumstances that necessitate self-defence, then the police officer is authorized to open fire pursuant to the regulations applicable to such situations.

152. **Use of firearms to prevent imminent danger to life**. Under the police open-fire regulations, firearms may be used in the event of a real danger of imminent injury to the life or bodily integrity of a police officer or of others, provided that there is no other way to prevent such injury. Use of firearms in such circumstances must not exceed what is reasonable for the purpose of preventing the imminent injury, and in such a manner that the damage that may result from the use of firearms does not outweigh that which the use thereof is intended to prevent. Police officers are required to fill out a report regarding every use of firearms, including accidental firings; in the latter case every police officer present during the accidental firing must fill out such a report. These regulations, which apply to the Israel Police and the Border Police, are taught to all police officers in training courses or sessions.

153. **Israel Defence Forces**. The open-fire regulations applicable to soldiers in the IDF are based on principles analogous to those incumbent upon the Israel Police and Border Guard. In general, the IDF open-fire regulations address two types of situations: arresting persons who are suspected of having committed a dangerous security-related offence, and defending against mortal danger. In the first class of case, the soldier may open fire only as a last resort, when all other means of apprehending and arresting the suspect have failed. Under the procedure for arresting a suspect, the soldier must first call out a warning; if that is to no avail, then he may fire a warning shot in the air in a manner that does not endanger any person or property; if the warning shot, too, does not suffice, then the soldier may direct fire, solely at the legs of the suspect. In the second class of case, when there is real, imminent danger to life, the soldier may open fire to injure the attacker, and him alone. Such self-defence is permitted if it conforms with the "necessity" defence as defined in the Penal Law. If the circumstances allow, the soldier must use his weapons in a graduated manner, according to the open-fire procedure for arresting a suspect described above. In both types of cases, it is forbidden to open fire if there is a danger of injuring innocent bystanders. In every case in which a person is injured, the soldiers must ensure medical treatment.

Investigation of Felonies and Causes of Death Law

154. Another significant instrument for investigating cases of arbitrary deprivation of life is the Criminal Procedure Amendment (Investigation of Felonies and Causes of Death) Law, 5718-1958. Under this law, a Magistrate's Court judge is empowered to undertake a thorough investigation of the reasons for a person's death when there are reasonable grounds to suspect that the death was not due to natural causes, or was caused by a criminal act, or the person died while detained, imprisoned, or hospitalized in a mental hospital or closed institution for developmentally disabled minors (sect. 19 of the Law). Application for such an investigation may be made by a relative of the deceased, as well as by the Attorney-General, a police captain or a doctor (ibid).

155. Once an application for an investigation is filed with the Magistrate's Court, all actions with regard to the corpse of the deceased are prohibited without permission from the investigating judge. When a person dies while in detention, imprisonment, hospitalization in a mental hospital or in a closed institution for retarded minors, the commander or director of the facility or institution has a duty to notify the police regarding the death. Breach of this duty is punishable by up to three years' imprisonment (sects. 22-23 of the Law). In the course of his or her investigation, the judge may summon and examine witnesses, order an autopsy or other examination of the corpse, and order the delay of burial or the removal of the body from the grave for the purpose of such an examination. The investigation continues until the judge determines that the reasons for death have been proved to his or her satisfaction, or, conversely, that the evidence does not prove a clear cause of death. In the latter case, the judge may suspend the investigation until further evidence is brought.

156. If the evidence brought before the investigating judge is sufficient to prove that a criminal offence was committed, he or she may order the District Attorney to issue an indictment for that offence (sect. 32 of the Law), without need for further investigation. Before ordering an indictment, the judge must allow the person suspected of committing the offence to raise claims and bring evidence in his defence. The proceedings in such investigations may be public or sequestered in whole or in part, at the discretion of the investigating judge. Similarly, publication of the proceedings or their results may be prohibited, in whole or in part, by the investigating judge (sect. 36), according to legal rules applying to publicity of court proceedings, which are discussed under article 14.

Compensation of victims

157. In cases of arbitrary deprivation of life, the estate or dependents of the deceased may seek compensation from the person who caused the death in the context of criminal or civil proceedings. If the act causing death constitutes a crime, and the perpetrator is convicted, the court which hears the criminal case may award compensation for injury or suffering up to a specified ceiling, without affecting the right to sue for civil damages (sect. 77 of the Penal Law, 5737-1977). In addition, a suit for compensation may be filed against the perpetrator or his principal for negligent causing of death under the Civil Wrongs Ordinance [New Version], with no ceiling on damages.

158. When the person allegedly responsible for causing death is a member of the law enforcement authorities, security forces, or other public servant, the estate or dependents of the deceased may sue both the perpetrator and the State for compensation (sect. 7 of the Civil Wrongs Ordinance, sect. 2 of the Civil Wrongs (Liability of the State) Law, 5712-1952). Compensation may be awarded for the full gamut of types of injury recognized by the law of torts in cases of negligent causing of death. However, the public servant and the State may be exempted from civil liability in certain circumstances, as follows:

(a) If the act in question was done within the scope of lawful authority, or in good-faith use of apparent legal authority (sect. 7 of the Civil Wrongs Ordinance, sect. 3 of the Civil Wrongs (Liability of the State) Law, 5712-1952);

(b) A public servant is not liable in tort for civil wrongs done by an agent that he appointed or by another public servant, except if he permitted or ratified the action explicitly;

(c) Similarly, the State or its authorities, like any other principal, are not civilly liable for an act of assault undertaken by a public servant, unless the authority explicitly allowed or ratified the assault (sect. 25 of the Civil Wrongs Ordinance);

(d) A police officer may claim a defence from civil liability for injury, including death, caused by reasonable use of force during dispersal of a riotous disturbance, provided that a series of earlier actions to disperse the disturbance are taken previously and the disturbance still threatens public order, as discussed above, and the open-fire regulations are not violated;

(e) A police officer may also claim a defence from civil liability if he acted properly pursuant to a court order or an order of the Chief Execution Officer (sect. 6 of the Police Ordinance [New Version], 5731-1971);

(f) The State is exempted from civil liability for injury emanating from an act of war taken by the Israel Defence Forces.

However, neither the State nor public servants are exempted from civil liability in cases of negligence.

159. Despite the above defences to civil liability, many suits for compensation are filed against public servants and the State for use of force which exceeds the scope of lawful authority, including suits for negligent homicide. In a substantial number of these cases, the State pays considerable compensation. At the time that this report was written, no official statistics were available on the overall number of such civil lawsuits and their outcomes.

160. Institutional reforms in law enforcement and educational programmes aimed at reducing the occurrence of violence and mistreatment by law enforcement authorities are discussed under article 7.

Death penalty

161. Although several provisions in Israel's criminal legislation allow for the imposition of the death penalty, as described below, the death penalty has been carried out only once since the establishment of the State, in the case of Adolph Eichmann. There are no persons who are currently appealing a death sentence. The most recent case was that of John Demjanjuk, who, after having been sentenced to death for war crimes, genocide and crimes against the Jewish

people, was acquitted in 1993 on appeal to the Supreme Court due to a reasonable doubt as to whether he was indeed "Ivan the Terrible" from the Treblinka death camp.

162. Under Israeli legislation, the death penalty may be imposed in four instances. Section 1(a) of the Nazi and Nazi Collaborators (Punishment) Law, 5710-1950, prescribes the death penalty for acts constituting crimes against the Jewish people committed during the period of the Nazi regime, and for crimes against humanity or war crimes committed during the Second World War. As is the case in other states that have enacted war crimes legislation in respect of acts committed during the Second World War, the above Law is based on the notion that the crimes that they prohibit constituted violations of the law of nations at the time they were committed.

163. In addition, pursuant to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, to which Israel is a party, the Knesset enacted the Crime of Genocide (Prevention and Punishment) Law, 5710-1950, sections 1 and 2 of which provide as follows:

> "1. (a) In this Law, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group (hereinafter referred to as group) as such:
>
> "(1) killing members of the group;
>
> "(2) causing serious bodily harm to members of the group;
>
> "(3) inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
>
> "(4) imposing measures intended to prevent births within the group;
>
> "(5) forcibly transferring children of the group to another group;
>
> "(b) In subsection (a), child means a person under eighteen years of age.
>
> "2. A person guilty of genocide shall be punishable with death; provided that if he committed the act constituting the offence under circumstances which, but for section 6 [which provides that certain defences normally available under the criminal law such as legal duty, necessity or compulsion do not apply to genocide], would exempt him from criminal responsibility or would be reason for pardoning the offence, and he tried to the best of his ability to mitigate the consequences of the act, he shall be liable to imprisonment of a term not less than ten years."

Persons found guilty of conspiracy or incitement to commit genocide, or of acting as an accomplice to genocide, are also subject to the death penalty by law.

164. Sections 97-99 of the Penal Law, as well as section 43 of the Military Justice Law, 5715-1955, prescribe the death penalty as the maximum punishment for offences constituting treason during wartime.

165. Finally, the Defence (Emergency) Regulations, 1945, allow for imposition of the death penalty for offences involving illegal use of firearms against persons, or use of explosives or inflammable objects with intent to kill or to cause grievous bodily harm (Regulation 58). In practice, however, the State Attorney's Office does not request the death penalty, even for the most severe offences.

166. The Youth (Judgment, Punishment and Modes of Treatment) Law, 5731-1971, prohibits imposition of the death penalty on any person who was a minor at the time the offence was committed (sect. 25 (b)). There is no legislation specifically prohibiting the imposition of the death penalty on pregnant women. This issue has never arisen as a practical matter, as no woman has been sentenced to death since the establishment of the State of Israel.

167. In every case in which a death penalty may be imposed, the Criminal Procedure Law [Consolidated Version], 5742-1982, requires an automatic appeal to the Supreme Court, even if the defendant has not appealed the sentence or conviction (sect. 202). As with any other convicted person, a person sentenced to death has the right to petition the President of the State for pardon, clemency, or commutation of sentence.

Article 7 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

168. Israel is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Israel's initial report under that convention was submitted in January 1994 (CAT/C/16/Add.4); Israel submitted a special report to the Committee against Torture (CAT/C/33/Add.2/Rev.1) in 1997. For a consideration of these two reports by the Committee, reference is made to documents CAT/C/SR.183 and 184 and Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44 (A/49/46), paras. 159-171 (initial report); CAT/C/SR.295 and CAT/C/SR.295/Add.1 (special report). In addition, the obligations under this article relating to the prohibition of cruel, inhuman or degrading treatment or punishment are related to the discussion under several other articles, particularly articles 6 and 8 and paragraph 1 of article 10.

Legislative provisions bearing on the prohibition of torture and of cruel, unusual or degrading punishment

169. Current Israeli legislation does not contain an explicit definition of "torture" as such. Instead, a variety of statutory provisions cover all acts of torture and of cruel, inhuman or degrading punishment, as discussed below. As of the submission of this report, three legislative bills, relating to the prohibition of torture, the invalidation of confessions extracted through torture, and the regulation of the activities of the General Security Service (GSS) are in various stages of the legislative process.

170. Section 2 of Basic Law: Human Liberty and Dignity, which prohibits any "violation of the life, body or dignity of any person as such", and section 4 of the Basic Law, which grants all persons the right to protection against such violations, have constitutional status in Israel's legislative framework. The Supreme Court arguably has the power to void any legislation enacted after the entering into force of the Basic Law which violates the above provisions; previously enacted laws may not be deemed void by the Court for this reason, but they will be interpreted in accordance with the fundamental principles of the sanctity of life, integrity of the body and primacy of human dignity, broadly construed. These provisions in the Basic Law, then, may be deemed to constitute a general prohibition of cruel, inhuman or degrading treatment or punishment, including torture, and are binding both on public and private entities.

171. Several provisions in the Penal Law, 5737-1977, prohibit actions that amount to cruel and inhuman or degrading treatment or punishment. Section 277 forbids oppression by a public servant, as follows:

> "A public servant who does one of the following is liable to imprisonment for three years:
>
> > "(1) uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offence or information relating to an offence;
> >
> > "(2) threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence."

Section 329 of the Penal Law prohibits causing harm with aggravating intent, as follows:

> "A person who does one of the following with intent to disable, disfigure or do grievous harm to another or to resist or prevent the lawful arrest or detention of himself or another is liable to imprisonment for 20 years:
>
> > "(1) unlawfully wounds or does grievous harm to a person;
> >
> > "(2) unlawfully attempts to strike a person with a projectile, knife or other dangerous or offensive weapon;
> >
> > "(3) unlawfully causes an explosive substance to explode;
> >
> > "(4) sends or delivers an explosive substance or other dangerous or noxious thing to a person or causes a person to receive any such substance or thing;
> >
> > "(5) puts a destructive or explosive substance or a corrosive fluid in any place;

"(6) throws any substance or fluid mentioned in paragraph (5) at a person or otherwise applies it to his body."

Section 333 of the Law makes unlawful causing of grievous harm to another person punishable by seven years' imprisonment. Sections 368 B and 368 C prohibit assault or abuse of minors and invalids. Sections 378-382 proscribe assault, making it punishable by between two and six years' imprisonment. "Assault" is defined as directly or indirectly striking, touching, pushing or otherwise applying force to the person of another without his consent or with his consent obtained by fraud; it specifically includes "the application of heat, light, electricity, gas, odour or any other thing or substance if applied in such a degree as to cause injury or discomfort" (sect. 378). In addition, section 427 of the Law prohibits blackmail with use of force, including the administration of drugs or intoxicating liquors. All of the above provisions are applicable to law enforcement officials and members of the security forces.

172. In addition, section 65 of the Military Justice Law, 5715-1955, provides that a "soldier who strikes or otherwise maltreats a person committed to his custody or a soldier inferior to him in rank, or who abuses them in another manner, is liable to imprisonment for a term of three years."

173. **Attempt, assistance, encouragement and incitement**. The general provisions of the Penal Law also provide for criminal liability of persons who attempt or assist or encourage the commission of any of the offences noted above, a matter of particular importance in cases of physical or psychological abuse. The following are the relevant provisions of Chapter Five of the Penal Law, entitled "Derivative Offences":*

"Title One: Attempt

"What constitutes an attempt

"25. A person attempts to commit an offence, if he - with intent to commit it - commits an act that does not only constitute preparation, provided the offence was not completed.

"Commission of offence is impossible

"26. For purposes of attempt, it shall be immaterial that the commission of the offence was impossible, because of circumstances of which the person who made the attempt was not aware or in respect of which he was mistaken.

---

* These provisions were enacted in 1994 as an amendment to the Penal Law. As no official translation of the amendment is yet available, the following is an unofficial translation.

"Special penalty for attempt

"27. If a provision sets a mandatory penalty or a minimum penalty for an offence, then it shall not apply to an attempt to commit that offence.

"Exemption for remorse

"28. If a person attempted to commit an offence, he shall not bear criminal liability therefor, if he proved that, of his own free will and out of contrition - he stopped its commission or substantively contributed to the prevention of results on which the completion of the offence depends; however, the aforesaid shall not derogate from his criminal liability for another completed offence connected to the same act.

"Title Two: Parties to an Offence

"Perpetrator

"29. (a) 'Perpetrator of an offence' includes a person who committed the offence jointly or who committed through another.

"(b) Participants in the commission of an offence, who perform acts for its commission, are joint perpetrators, and it is immaterial whether all acts were performed jointly or some were performed by one person and some by another.

"(c) A perpetrator of an offence through another is a person who contributed to the commission of the act by others who acted as his instrument, the other person being in one of the following situations, within their meaning in this Law:

"(1) he is a minor or mentally incompetent;

"(2) he lacks control;

"(3) he has no criminal intent;

"(4) he misunderstands the circumstances;

"(5) he is under duress or has a justification.

"(d) for the purposes of subsection (c), if the offence is conditional on a certain perpetrator, then the person in question shall be deemed to have committed that offence even if the condition is only met by the other person.

"Incitement

"30. If a person causes another to commit an offence by means of persuasion, encouragement, demand, cajolery or by means of anything else that constitutes the application of pressure, then he incites an offence.

"Accessory

"31. If a person does anything, before an offence or during its commission, to make its commission possible, to support or protect it, or to prevent the perpetrator from being taken or the offence or its spoils from being discovered, or if he contributes in any other way to the creation of conditions for the commission of the offence, then he is an accessory.

"Penalty of accessory

"32. The penalty for being an accessory to the commission of an offence shall be half the penalty determined by legislation for the commission of that offence; however, if the penalty set is:

"(1) the death penalty or mandatory life imprisonment, then his penalty shall be 20 years' imprisonment;

"(2) life imprisonment, then his penalty shall be 10 years' imprisonment;

"(3) a minimum penalty, then his penalty shall not be less than half the minimum penalty;

"(4) any mandatory penalty, then it shall be the maximum penalty and half thereof shall be the minimum penalty.

"Attempted incitement

"33. The penalty for attempting to incite another to commit an offence shall be half the penalty for the commission of the offence itself; however, if the penalty set is:

"(1) the death penalty or mandatory life imprisonment, then his penalty shall be 20 years' imprisonment;

"(2) life imprisonment, then his penalty shall be 10 years' imprisonment;

"(3) a minimum penalty, then his penalty shall not be less than half the minimum penalty;

"(4) any mandatory penalty, then it shall be the maximum penalty and half thereof shall be the minimum penalty.

"Exemption for remorse

"34. (a) If a person was an accessory or if he incited another to commit an offence, he shall not bear criminal liability for being an accessory or for incitement, if he prevented the commission of the offence or its completion, or if he informed the authorities of the offence in time, in order to prevent its commission or its completion, or if - to that end - he acted to the best of his ability in some other manner; however, the aforesaid shall not derogate from his criminal liability for another completed offence connected to the same act.

"(b) For the purposes of this section, 'authorities' means the Israel Police or any other body lawfully empowered to prevent the commission or completion of an offence.

"Other or additional offence

"34A. (a) If, while committing an offence, a perpetrator also committed another or an additional offence, and if, under the circumstances, an ordinary person could have been aware of the possibility that it would be committed, then:

"(1) the other joint perpetrators shall also bear liability for it; however, if the other or additional offence was committed intentionally, then the other joint perpetrators shall bear liability for it only as an offence of indifference;

"(2) a person who incited or was an accessory to it shall also bear liability, as an offence of negligence, if such an offence exists based on the same facts;

"(b) If the court found an accused guilty under subsection (a) (1) for an offence for which there is a mandatory penalty, then it may impose a lighter penalty on him.

174. Mention may also be made of a law enacted shortly after Israel's independence, which prohibited punishment by lashing and repealed all legislation from the British Mandatory period which provided for such punishment (Repeal of Lashing Law, 5710-1950).

Administrative guidelines for GSS interrogations

175. The State of Israel maintains that the basic human rights of all persons under its jurisdiction must never be violated, regardless of the crimes that the individual may have committed. Israel recognizes, however, its responsibility to protect the lives of all its citizens and residents from harm at the hands of terrorist organizations. To prevent terrorism effectively while ensuring that the basic human rights of even the most dangerous of criminals are protected, the Israeli authorities have adopted strict rules for the handling of interrogations. These guidelines are designed to enable investigators to obtain crucial information on terrorist

activities from suspects who, for obvious reasons, would not volunteer such information, while at the same time ensuring that the suspects are not maltreated.

The Landau Commission

176. The basic guidelines on interrogation were laid down in 1987 by the Landau Commission of Inquiry. The Commission, headed by former Supreme Court President Justice Moshe Landau, was appointed following a decision by the Government to examine the General Security Service's methods of interrogation of terrorist suspects. In preparing its recommendations, the Landau Commission examined international human rights law standards, existing Israeli legislation prohibiting torture and maltreatment, and the guidelines of other democracies confronted with the threat of terrorism.

177. The Landau Commission set out to define "with as much precision as possible the boundaries of what is permitted to the interrogator and, mainly, what he is prohibited from doing." The Commission determined that in dealing with dangerous terrorists who are shown to represent a grave threat to the State of Israel and its inhabitants, the use of a moderate degree of pressure, including physical pressure, to obtain information crucial for the protection of life is unavoidable in certain circumstances. Such circumstances include situations in which the information sought from a detainee believed to be personally involved in serious terrorist activities can prevent imminent murder, or where the detainee possesses vital information regarding the activities of a terrorist organization which could not be uncovered by any other means (for example, the location of arms or caches of explosives intended for use in imminent planned acts of terrorism).

178. The Landau Commission recognized the danger posed to the democratic values of the State of Israel should its investigative authorities abuse their power by resorting to unnecessary or unduly harsh forms of pressure. As a result, the Commission recommended that psychological forms of pressure be used instead of physical pressure whenever possible, and that no more than "moderate physical pressure" be sanctioned in limited cases in which the degree of anticipated danger is sufficiently great.

179. In full awareness of the seriousness and sensitivity of the use of moderate pressure during interrogation, the Landau Commission set forth guidelines which provided for limited forms of pressure under very specific circumstances, to be determined on a case-by-case basis. The guidelines by no means authorize indiscriminate use of force. Rather, the Commission attempted to define those specific circumstances, and the interrogation practices permissible therein, so that, in the opinion of the Commission, "if these boundaries are maintained exactly in letter and in spirit, the effectiveness of the interrogation will be assured, while at the same time it will be far from the use of physical or mental torture, maltreatment of the person being interrogated, or the degradation of his human dignity."

180. To ensure that disproportionate pressure is not used, the Landau Commission determined several norms which have been adopted and are now in force, namely:

(a) Disproportionate exertion of pressure on the suspect is forbidden; pressure must never reach the level of physical torture or maltreatment of the suspect, or grievous harm to his honour which deprives him of his human dignity;

(b) The use of less serious measures must be weighed against the degree of anticipated danger, according to the information in the possession of the interrogator;

(c) The physical and psychological means of pressure permitted for use by an interrogator must be defined and limited in advance by issuing binding directives;

(d) There must be strict supervision of the implementation of these directives for GSS interrogators;

(e) The interrogators' supervisors must react firmly and without hesitation to every deviation from the permissible, imposing disciplinary punishment, and, in serious cases, causing criminal proceedings to be instituted against the offending interrogator.

181. In the second section of its report, the Landau Commission described the forms of pressure permitted for GSS interrogators and the circumstances in which they may be used. This section has remained confidential out of concern that, should the narrow restrictions binding the interrogators be known to the suspects undergoing questioning, their effectiveness would be vitiated.

Supervision and review of interrogative practices

182. The Government of Israel recognized the importance of establishing systems of review of interrogation practices to ensure that GSS investigators do not violate the guidelines. Initially, the GSS Comptroller was instructed to examine all claims of torture or maltreatment during interrogation. From 1987 until 1994, the Comptroller carried out this review function, initiating disciplinary or legal action against interrogators in cases where they have been found to have deviated from the legal guidelines.

183. **The Department for Investigation of Police Misconduct**. In 1992, a special department was set up at the Ministry of Justice - the Department for Investigation of Police Personnel (DIPM) - to investigate allegations of criminal conduct by police generally. In 1994, in accordance with the recommendations of the Landau Commission that there be external oversight of General Security Service activities, responsibility for claims of maltreatment by GSS interrogators was also transferred to the DIPM, under the direct supervision of the State Attorney. As discussed under article 6, the activity of the DIPM appears to have had a significant deterrent impact on the incidence of intentional physical abuse of detainees and citizens by law enforcement officials, including GSS interrogators. Statistical information regarding the performance of the DIPM appears below under this article.

184. **The State Comptroller's Office**. In 1995, the State Comptroller's Office completed an examination of the GSS's investigator's unit during the years 1990-1992. The State Comptroller's findings, which were submitted to a

special subcommittee of the Knesset State Comptroller Committee, found several instances of deviations from the Landau Commission's guidelines, and recommended measures to ensure compliance. The findings themselves have not yet been made public.

Ministerial scrutiny

185. In accordance with the recommendations of the Landau Commission, a special ministerial committee headed by the Prime Minister was established in 1988 to review the interrogation guidelines periodically.

186. In April 1993, the ministerial committee determined that several changes should be made in the GSS guidelines. On the basis of the committee's recommendations, new guidelines were issued to GSS investigators. The new guidelines clearly stipulate that the need and justification for the use of limited pressure by investigators must be established in every case, according to its own special circumstances. The guidelines emphasize that the use of exceptional methods is intended only for situations in which vital information is being concealed, and not as a way to humiliate or mistreat those under investigation. They place a duty on the investigator to consider whether the means of pressure the use of which is being contemplated is proportional to the degree of foreseeable danger of the activity under investigation Senior GSS staff must approve in writing the use of measures deemed to constitute moderate physical pressure, once again on a case-by-case basis, in light of the above criteria. In any case, it is expressly forbidden to injure or torture suspects, to deny them food or drink, to refuse permission to use the bathroom, or to subject the person to extreme temperatures for prolonged periods.

187. Since then, the guidelines have been reviewed from time to time by the ministerial committee, in the light of conclusions drawn from recent experience. The ministerial committee also reviews, in real time, specific cases of persons under investigation who are known to be active members of the military arms of terror groups, and with regard to whom there are grounds to believe that they have knowledge of future terror attacks in the planning or execution stages.

Judicial Review

188. All complaints of alleged mistreatment during investigation may be challenged directly to the Supreme Court sitting as a High Court of Justice. Any party who believes he or she has been wronged - not only the detainee himself or his family, but, under the extremely flexible rules of standing in Israeli law, also virtually any person or group who claims an interest in legal or humanitarian issues involved - may have its petition heard by the High Court of Justice within 48 hours of being filed. Over the past few years several petitions have been filed with the Court seeking injunctions to forbid the GSS from using any force, or particular methods of pressure, throughout the investigation. The Court reviews each of these cases for their compliance with the detailed guidelines, and often, with the approval of the petitioner or his attorney, hears sensitive evidence in camera to examine whether the magnitude of foreseeable or imminent danger, and the grounds for believing

that the suspect actually has vital information which is crucial to preventing such danger, are sufficiently clear to justify the use of the specific methods of interrogation in question. Two such cases are worth mentioning in detail.

189. In December 1995, the High Court of Justice issued an interim injunction on the basis of a petition brought by Abd al-Halim Belbaysi against the GSS (H.C.J. 336/96), forbidding the use of physical pressure against the petitioner during his interrogation. At the request of the GSS, this interim order was later cancelled after the petitioner, who had earlier signed a written declaration denying any connection to any illegal activity, admitted that he had planned the terrorist attack at Beit Lid on 22 January 1995 in which two suicide bombers killed 21 persons. Belbaysi confessed that three bombs had been prepared at his home, that he himself had hidden the bombs in the vicinity of Beit Lid and that on the day of the attack he had handed over the two bombs to the two suicide bombers and had driven them to the site of the attack. Belbaysi also provided information which enabled the authorities to retrieve the third bomb, containing 15 kg of explosives, from its hiding place. During the investigation it also became apparent that Belbaysi had additional information regarding grave terrorist attacks planned for the near future in Israel. To help uncover this crucial information, the GSS appealed to the Court to cancel the interim injunction. The Court accepted the GSS arguments, based on evidence presented, that disclosure of this information by Belbaysi could save human lives. In cancelling the injunction, however, the Court emphasized that the investigation could not involve torture or any other "measures which are not compatible with the law and the relevant guidelines" (H.C.J. 336/96, supra).

190. More recently, in the case of Muhammad Abdel Aziz Hamdan (H.C.J. 8049/96), the High Court issued an interim injunction similarly forbidding the GSS to use any form of physical pressure throughout his interrogation. In this case, within 24 hours, as a result of new inquiries and additional information regarding the petitioner, the GSS moved to cancel the interim injunction. Hamdan had previously admitted that he belonged to and was active in a cell of the Islamic Jihad; he had been among the activists deported to Lebanon in 1993, had served terms of imprisonment and administrative detention in Israeli jails, and had been detained by the Palestinian Authority in March 1996, together with other activists of rejectionist terrorist organizations. He was released from detention by the Palestinian Authority in August 1996. In October of that year, the GSS received information that raised definite suspicions that Hamdan possessed extremely vital information, the disclosure of which would help save human lives and prevent imminent serious terrorist attacks. It was at this point that the GSS applied to the Court to cancel the interim injunction. The GSS representative stated before the Court that the physical measures being contemplated did not amount to "torture" as defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and that each of the measures fell within the defence of "necessity" specified in section 34 (11) of the Penal Law, as the conditions for such a defence existed in the circumstances. The Court agreed to cancel the interim injunction, holding, inter alia:

> "After having reviewed the classified material presented to us, we are satisfied that the respondent does indeed have in its possession

> information on which a clear suspicion can be based that the petitioner possesses extremely vital information, the immediate disclosure of which will prevent the most serious attacks. Under these circumstances, we are of the opinion that there is no justification to continue with the interim injunction."

Once again, the Court stressed that "the cancelling of the interim injunction is not tantamount to permission to use interrogation methods against the petitioner which are against the law" (H.C.J. 8049/96, supra).

191. In several other cases, the Court issued interim injunctions forbidding the use of physical pressure during GSS interrogations, which remained in force throughout the investigation. See, e.g., H.C.J. 2210/96, *Algazal* v. *General Security Service* (not yet published). Another petition, which challenged the legality of the GSS interrogation guidelines then in force and demanded that the secret portion of the Landau Commission report be made public, was denied by the Court, inter alia, because it was not linked to the application of these guidelines in the circumstances of a particular case. H.C.J. 2581/91, *Salkhat et al.* v. *State of Israel et al.*, 47(4) P.D. 837.

Treatment of Detainees

192. The discussion under this and the following paragraphs should be read in conjunction with that under article 10.

193. The fundamental right of detainees and prisoners to conditions ensuring basic maintenance of their human dignity has been articulated and enforced in a long line of judgements of the Israel Supreme Court. In *Yusef* v. *Director of Central Prison*, for example, the Court held that "the order of life in the prison by its nature requires an infringement of liberties which a free person enjoys, but such infringement must derive from the nature and needs of imprisonment, and not beyond that ... [t]he purposes of criminal punishment may not be achieved through violation of the prisoner's dignity or his humanity ... It is the right of every person in Israel who is sentenced to imprisonment (or lawfully detained) to be confined in conditions that allow for civilized human life ... Only 'the most serious reasons', such as special security measures that must be taken, may justify any deviation from this basic approach." (H.C.J. 540-546/84, 40(1) P.D. 567, 573. See also H.C.J. 114/86, *Weill* v. *State of Israel et al.*, 41(3) P.D. 477 (minimal civilized arrangements include the right to conjugal visits).

194. Most of the basic conditions granted to prisoners and detainees as a matter of right, as well as limitations on measures that may impair their liberty or dignity and procedures for adjudicating prisoners' complaints, are provided for in legislation, primarily in the Criminal Procedure (Enforcement Powers - Arrest) Law, 5756-1996, and regulations thereunder. Other privileges or services have been given the status of a legal right by decisions of the Supreme Court, such as the presence in the prison facility of a social worker to deal with certain prisoner's concerns (*Yusef* v. *Director of Central Prison*, *supra*).

195. **Segregation and solitary confinement**. Under section 21 (a) of the Prisons Regulations, 5738-1978, a senior prison official may order that a

prisoner be confined separately from the rest of the prison population if he is convinced that doing so is necessary for reasons of State security, for maintenance of security, order or discipline in the prison, for protection of the safety or health of the prisoner or other prisoners, or at the prisoner's own request. This type of separate confinement is a preventive, not a punitive measure, and is to be distinguished from solitary confinement, which is discussed below. Segregation is to be used only when the purpose therefor cannot be accomplished by less restrictive means. Segregated prisoners have all of the rights and privileges of ordinary prisoners, except for conditions deriving by their nature from the fact of segregation. Such prisoners remain in their cells during the day hours, except for their daily excursion, family visits, medical care, visits with legal counsel, parole officer, social worker and so on. Such prisoners are always accompanied by a warden whenever they are outside of their cell. Prisoners convicted of a criminal offence who are held in segregation for more than three months may be granted additional privileges and personal effects (Part 14 of the Prison Commissioner's standing orders). The term of segregation is for 48 hours when ordered by a senior prison official; it may be extended for additional periods up to a total of 14 days with the consent of the director of the prison. Thereafter, separation may be extended only by order of the prison director, with the consent of the Commissioner of Prisons, provided that the justification for separation must be reviewed periodically (between 48 hours and 2 months, depending on the type of case in question), or at earlier intervals if the prisoner requests. Any prisoner who is confined separately for a period exceeding eight months may lodge an appeal to the Prisons Commissioner, who decides whether the separation will continue or cease. Certain classes of prisoners or detainees are segregated as a matter of law or policy from the rest of the prison population, such as known drug addicts or persons under administrative detention, and persons suspected or convicted of security-related offences.

196. Solitary confinement, on the other hand, is one of several punitive measures that may be imposed on a prisoner for violation of the prison code of conduct (sect. 56 of the Prisons Ordinance). Solitary confinement may be imposed only by the director or deputy director of the prison. As with all punitive measures, the decision to place a prisoner in solitary confinement may not be taken except following an investigation and a hearing at which the prisoner may hear the charges and evidence against him, and may defend himself properly (sect. 60 of the Prisons Ordinance). The maximum term of solitary confinement is 14 days, though the prisoner may not serve more than 7 days consecutively, and must be given a break of at least 7 days before solitary confinement is resumed.

197. All decisions regarding segregation and solitary confinement may be appealed directly to the appropriate District Court, and the District Court's decision may be appealed to the Supreme Court.

198. **Contacts with the outside world**. Immediately upon the arrest of any person, notification must be made to a relative or other person close to the detainee regarding the fact of the arrest and the place of detention (Criminal Procedure (Enforcement Powers - Arrest) Law, 5756-1996, sect. 33). Notice will also be given, at the detainee's request, to legal counsel of his choice, or, if the detainee does not have a lawyer, to one of the attorneys appearing

on a list drawn up by the Bar Association and presented to the detainee. Notification of a person's arrest for certain security-related offences, or for other offences carrying a penalty of at least 10 years' imprisonment may be delayed for up to 48 hours by decision of a District Court judge, or be delivered only to a person whom the judge determines, if the Minister of Defence certifies in writing that national security requires that the arrest be kept secret, or if the Inspector General of the Israel Police certifies in writing that the success of the criminal investigation so requires. This period may be renewed, by application of the Minister or the Inspector General, for subsequent 48-hour periods, up to a total of 7 days, or, in rare cases of certain defined security-related offences, up to a total of 15 days (ibid.).

199. The rights of incarcerated persons to maintain contacts with the outside world vary according to the type of detention. The rights to conduct correspondence, use the telephone, have visitation as well as conjugal visits, and to leave the prison on furlough, are discussed under article 10.

Disciplinary and Criminal Proceedings and other Judicial Relief

200. As discussed under Article 6, the actions of law enforcement officials are subject to several overlapping legal institutions for review and sanctions. In general, each arm of the law enforcement authorities has disciplinary procedures, which may be initiated by the person claiming a violation, by other entities, or by the authorities themselves; all public servants are subject to the provisions of the criminal law; and detainees or prisoners may apply directly to the courts for relief against the action or decision in question.

201. **Israel Police**. Disciplinary proceedings are initiated by submission of a complaint to the disciplinary department of the Personnel Division at Central Headquarters or to one of its several branch offices. The Police may initiate disciplinary proceedings when it becomes aware of violations from other sources (e.g., statements of witnesses in the course of investigations, or information forwarded by police personnel). In addition, the Department for Investigation of Police Misconduct (DIPM) in the Ministry of Justice, which is responsible for most criminal investigations against police officers, transfers files to the Disciplinary Department of the Police both when the actions complained of fall short of a criminal offence but constitute a prima facie disciplinary violation, and also when criminal proceedings are brought against a police officer for actions which may entail parallel disciplinary sanctions.

202. If the Disciplinary Department, upon investigating the incident, finds that there is sufficient evidence of an infraction, then the matter is referred to a disciplinary tribunal, composed of either a single judge or a three-judge panel, depending on the gravity of the violation. See generally Police (Disciplinary Proceedings) Regulations, 5749-1989; Police (Definition of Disciplinary Offences) Regulations, 5715-1955; Police Ordinance (New Version), 5731-1971, chapter 5.

203. Alongside the disciplinary sanctions that may be imposed by a tribunal or single judge, the Police is bound to consider administrative sanctions

against an officer who violates the law or internal standing orders. Administrative sanctions may be imposed at any time during the disciplinary or criminal proceedings, as well as after they are concluded. Such sanctions include dismissal from the police force, suspension, transfer to another position or department, demotion, postponement of promotion, and probation.

204. Criminal investigations against police officers may be initiated by a complaint filed with the DIPM by the victim or his representative, by the DIPM itself as a result of information submitted to it by independent human rights groups or by entities within the Israel Police. A preliminary screening is carried out by a DIPM staff lawyer, who decides either to open an investigation or to close the file if the acts accused of do not give rise to a criminal offence (in the latter case the file may be transferred back to the Police for appropriate disciplinary measures, as aforesaid). In the course of investigation, the DIPM staff takes testimony from the complainant, the suspect and other witnesses, as well as any other evidence relevant to the case. If the investigation indicates sufficient evidence of a criminal offence, then the file is transferred to the District Attorney's Office in the region where the offence occurred, or, in cases of unlawful use of force, to the State Attorney's Office, for a final decision as to whether to file criminal charges against the police officer. Under current guidelines, all criminal trials against police officers are prosecuted by the District Attorney's office. The DIPM may also decide that the police officer should stand trial in disciplinary proceedings for the unlawful use of force, in lieu of criminal proceedings.

205. Below are statistics compiled by the Israel Police and the DIPM regarding treatment of disciplinary and criminal complaints, respectively.

206. Between 1992 and July 1996, the DIPM investigated 211 cases involving the use of firearms, and 25 cases involving the use of force, or threat of using force, in order to extract a confession. In 1993, 15 officers were tried in criminal proceedings for involvement in offences amounting to assault; 12 of these officers were convicted, and 3 were acquitted. In 1994, 10 officers were convicted of such offences in criminal proceedings. In one noteworthy case, five police investigators in the Minorities Division of the Jerusalem Region were convicted in July 1995 for unlawful use of force in investigating suspects (Cr.F. 576/91, in the Jerusalem District Court). In September 1995 the defendants were sentenced to varying terms of imprisonment. The case is currently on appeal in the Supreme Court.

207. In 1994, 22 police officers were dismissed from the force, 2 of whom as a result of their involvement in violent offences (down from 18 dismissals as a result of violent offences in 1993); 13 others were dismissed for "unsuitability", which includes those who were involved in repeated incidents of unlawful use of force (in 1993, as a result of a special effort by the Police to remove the most problematic employees, 30 officers were dismissed for unsuitability). In 1995, 29 officers were similarly dismissed for unsuitability, and no officers were dismissed in 1995 as a result of violent offences. One officer was suspended in 1994 (out of a total of 20 suspensions that year) and 8 in 1995, as a result of involvement in violent offences; in 1993, no such suspensions were made.

Table 9. Unlawful use of force by police officers: number of complaints and results of investigation

Circumstances	1993	1994	1995	1996 a/
Investigation	119	95	97	70
Arrest	524	611	554	384
Conditions of detention	25	35	187	100
Refusal of citizen to identify himself or to accompany police officer	17	37	59	64
Search of suspect or premises	103	99	109	81
Violation of public order	110	122	233	106
Violation of order or discipline in a detention facility	44	34	26	35
Use of crude language	1	1	4	2
Traffic offences	101	120	161	113
Carrying out orders of the Execution Office (for civil judgement debts)	93	71	43	28
Holding persons in custody	103	40	47	54
Abuse of authority	283	286	334	70
Disputes between neighbours	2	6	4	2
Family disputes	1	1	1	1
Private disputes	4	5	4	13
On-duty dispute between two police officers	18	31	16	21
Argument between drivers	1	7	32	3
Training incidents	1	1	12	-
Demonstrations b/	-	-	1	32
Total files received	**1 960**	**1 861**	**2 155**	**1 301**
Referred for disciplinary trial	**280**	**208**	**184**	**104**
Final recommendation to file criminal indictment	**52**	**40**	**53**	**20**
Total files completed (including files from previous years)	**1 979**	**1 876**	**2 001**	**1 428**

a/ 1996 figures are for January-July.

b/ Demonstrations were inserted as a statistical category in 1996.

Table 10. Disciplinary investigations and results

	1994	1995
Disciplinary indictments filed (all offences)		
Charge sheets (three-judge panel)	252	251
Complaints (single judge)	217	49
Disciplinary indictments adjudicated (all offences)		
Charge sheets	301	215
Complaints	217	51
Files received from DAM.		
Regarding use of force - recommendation to file criminal charges	41	50
(Total number of officers involved)	(64)	(92)
Regarding use of force - with recommendation to file disciplinary charge sheet	168	127
(Total number of officers involved)	(246)	(180)
Regarding use of force - with recommendation for trial before a single disciplinary judge	79	47
(Total number of officers involved)	(93)	(55)
Recommendation to weigh disciplinary sanctions	307	366
(Total number of officers involved)	(388)	(459)

208. Alongside the ordinary criminal and disciplinary processes described above, detainees held in police lock-ups have the right to file for habeas corpus relief against any unlawful treatment, including torture or other cruel, inhuman or degrading treatment on the part of police officers.

209. **Prisons Service**. Currently, the disciplinary and criminal investigation procedures regarding Prisons Service personnel differs from those followed with regard to police officers. Any prisoner or detainee under the care of the Prisons Service may file a complaint regarding ill-treatment or conditions of detention to the director of the prison. In cases involving use of force, a special committee within the Prisons Service investigates the complaint and transfers the file to the Attorney-General, who decides whether to institute disciplinary or criminal proceedings. Disciplinary trials are held before a tribunal within the Prisons Service, which is similar in structure and procedures to that of the Israel Police (see generally the Prisons Ordinance, sect. 101 et seq., and second schedule defining disciplinary offences; and the Prisons (Disciplinary Procedures) Regulations, 5749-1989), while criminal files are transferred first to the Israel Police, for completion of the investigation and then to the appropriate District Attorney's office for filing a charge sheet.

210. **General Security Service**. Complaints by persons detained by the General Security Service regarding their treatment during investigation may be filed by the detainee or his legal representative, by local or international human rights organizations (complaints have been filed by the Public Committee against Torture in Israel, the Physicians' Association for Human Rights, Amnesty International, and the ICRC, among others). All complaints are examined by a complaints review unit within the GSS, which is subordinate to the State Attorney's Office. In the event that complaints are submitted to other governmental authorities, they are transferred to the above complaints unit, which is responsible for the initial investigation. Complaints that give rise to a suspicion that a criminal offence was committed are transferred to the DIPM at the Ministry of Justice.

211. In 1995, 81 such complaints were received regarding treatment of detainees during GSS investigations. Thirty-four of these complaints were filed by the detainee, 23 by the detainee's legal counsel, 9 by local organizations and 15 by international organizations. In some instances, several entities filed complaints regarding a particular case. In four cases during 1995, the complaints unit found deviations from lawful authority; these cases were dealt with administratively within the GSS, including sanctions against the persons involved. In one case, that of Samed abd al Harizat mentioned under article 6, a GSS investigator was tried in disciplinary proceedings before a special tribunal.

212. As discussed above, detainees in the custody of the GSS also have the right to petition the High Court of Justice directly for habeas corpus relief.

213. **Israel Defence Forces**. The IDF maintains a strict policy of investigating every claim of mistreatment of detainees by IDF investigators. Soldiers who are found to have deviated from IDF standing orders forbidding violence or the threat of violence in interrogations are either court-martialled or have disciplinary proceedings brought against them, depending on the severity of the charges. In 1991, the IDF also appointed a commission to review its interrogation practices and policies, headed by Major General (Reserve) Raphael Vardi, which resulted in the punishment of several interrogators. The Vardi Commission also submitted a list of recommendations designed to reduce the possibility of mistreatment by IDF investigators, which have been adopted.

Compensation to victims

214. Persons who have been subjected to torture or to any other unlawful mistreatment in violation of this article may, in addition to criminal, disciplinary or habeas corpus proceedings, initiate a tort action for damages against the perpetrators and against the State. In cases of assault, the State, like any other employer, is liable only if it has approved the unlawful assault or to have retroactively ratified it. In addition, victims may receive a certain degree of compensation in the context of criminal proceedings under section 77 of the Penal Law, 5737-1977, which empowers a convicting court to order the payment to the victim of a crime for damages or suffering. Such compensation is recovered in the same manner as a fine. Currently, the maximum amount payable to a particular victim is fixed at NIS 60,000.

Training of law enforcement officials

215. The Israel Police and the Prisons Service maintain thoroughgoing training programmes for personnel at all levels, in which their obligations regarding the respect and realization of civil and human rights are taught. These training programmes take three basic forms: required courses for all entry-level personnel, and subsequently for all personnel as a condition prior to promotion in rank; voluntary continuing education seminars on specific topics, which typically last between several days and one week; and periodic refresher courses.

216. Required courses for Israel Police personnel are taught at the National Police Academy in Shfar'am or at the Senior Officers' College near Netanya. All police employees must pass a two-month basic training course, which includes a total of 47 hours of instruction in the areas of professional ethics, providing service to citizens, police powers, use of force, unlawful commands, and disciplinary violations.

217. The required courses for sergeants, captains, and senior staff officers also devote between 42 to 80 hours to instruction regarding the above matters, as well as to modules on competence in human relations, conflict resolution, investigation of police personnel, media in a democracy, citizens' complaints, family violence, treatment of juvenile offenders, legal and practical duties deriving from the right to human dignity, and inculcation of awareness of human rights. In addition, continuing education courses on specific topics, such as methods of investigation, arrest and searches, and so on, involve practical instruction in observance of human rights.

Other institutional reform measures

218. In addition to the principal methods adopted in Israel to prevent the occurrence of torture or other ill-treatment of detainees, discussed above and under article 6, several important efforts at institutional and statutory reform which deserve mention are currently under way.

219. **The Kremnitzer Committee**. Following a report in 1993 by the Comptroller of the Israel Police which examined the systemic response to acts of violence by police personnel, the Minister of Police (now the Minister of Internal Security) appointed a public commission, headed by the former dean of the Law Faculty at the Hebrew University, Prof. Mordecai Kremnitzer, to propose a plan of action for dealing with the issue. The Kremnitzer Committee, as it is called, issued its report in June 1994, which included specific recommendations for the prevention and deterrence of violence by police officers. These recommendations may be summarized as follows:

(a) Prevention of police violence should be achieved by:

(i) Improvement in screening candidates for enlistment;

(ii) Involving more women in detective and fieldwork, so as to "soften" the contact between the police and citizens;

(iii) Examining the disciplinary profile of police personnel prior to promotion;

(iv) Placing emphasis on the responsibility of commanders to transmit the educational message directly to their charges, and especially regarding the equality of all persons and the rights of minorities;

(v) Videotaping investigations and field operations;

(b) The response to incidents of violence should include:

(i) Distinguishing between severe violence and the use of force which does not amount to severe violence; the former cases, according to the Committee's recommendation, should be adjudicated before a specially appointed Magistrate Court judge. If the police officer admits to the acts attributed to him, or if there exists unequivocal evidence against him, then he should be dismissed from the Police;

(ii) Any police officer who is convicted of severe violence should likewise be dismissed;

(iii) Occurrences of unlawful use of force which do not amount to severe violence should be dealt with in disciplinary proceedings or by senior commanding officers. Repeat occurrences should result in dismissal from the police force.

220. Following publication of the Kremnitzer Committee's report, the Israel Police adopted its recommendations, and the Minister of Police appointed an oversight committee to ensure their implementation. While the oversight committee has only recently begun to function actively, the Israel Police has taken several measures to implement the committee's recommendations, such as strict screening of candidates for enlistment in the police, including weighing of sociometric tests indicating capacity for self-control and interpersonal skills; periodic evaluations of performance; training workshops in questioning persons who are not designated as criminal suspects, as well as in prevention of violence, human rights and equality before the law (some of these workshops were taught by members of independent human rights groups); giving an annual prize for tolerance to particular precinct stations; publishing a newsletter on police ethics; and starting an experimental "community policing" project in 10 precincts. In addition, the disciplinary desk of the Israel Police was expanded to a full-fledged department, with added personnel, to improve the efficiency and quality of handling disciplinary complaints. The response of the Israel Police thus far in implementing the recommendations of the Kremnitzer Report has met with praise from at least one prominent independent civil rights group*.

---

* See Israel Human Rights Focus: 1996, Na'ama Yashuvi (ed.), Association for Civil Rights in Israel, June 1996, p. 130.

221. **The Goldberg Committee**. In 1993, the Minister of Justice and the Minister of Police appointed a public committee, headed by Supreme Court Justice Eliezer Goldberg, to examine the efficacy of convictions based solely or almost solely upon the defendant's confession, the availability of retrial, and other topics relating to the rights of those investigated by the police. The Goldberg Committee's report, published in 1994, included recommendations aimed at ensuring that false confessions are not extracted by illegal means. Among other things, the Committee recommended employment of investigation techniques and technologies which have been developed elsewhere, and which have proven effective in fulfilling the purposes of the criminal investigation without resort to violence; increasing supervision of investigation by senior investigators; videotaping of any interview at which the interviewee's lawyer is not present; and giving the judge who presides over detention hearings more of a role in actively investigating the conditions of detention and the investigation.

222. A draft law is currently being prepared at the Ministry of Justice to implement the above recommendations of the Goldberg Committee.

223. **Public Defender's Office**. In 1995, a national Public Defender's Office was created by legislation. The major impetus for forming the new department derived from the difficulties encountered by the courts in appointing experienced criminal attorneys to represent indigent persons suspected of serious offences. While it is too early to assess the performance of the new, State-funded department, it is anticipated that the augmented protection of the rights of criminal defendants and detainees by a highly trained corps of criminal defence attorneys will result, among other things, in a decrease in violent treatment on the part of law enforcement officials.

Corporal punishment and correctional methods in the schools

224. Under Israel law, a teacher or administrator who employs corporal punishment against a student may be prosecuted for criminal assault and, in appropriate circumstances, sued for civil damages.

225. A 1991 circular published by the Director-General of the Ministry of Education and Culture outlines procedures for disciplining students. Corporal punishment is explicitly forbidden. Under the guidelines, the teacher must first discuss the disciplinary infraction with the student, either alone or with an educational adviser, psychologist, or the student's parents. Before imposing any disciplinary measure, the student must be given a chance to explain his or her actions. Permitted disciplinary measures include an oral warning or reprimand, a written warning or reprimand, deprivation of privileges, removal from the classroom, transfer to another class for a specified period, suspension for specified periods, transfer to another school, or dismissal from the school. Any disciplinary measure must be reported to the student's parents, and in cases of transfer to another school the parents must be given a prior hearing.

Expulsion to countries where a person might be subjected to torture

226. According to judgements of the Israel Supreme Court in specific cases regarding the legality of deportation, the Court has specifically held that no

person may be deported to a country in which his physical safety cannot be guaranteed. Reference is made to the discussion under article 13 on this matter.

Commitment to psychiatric hospitals

227. The enactment in 1991 of the Mentally Ill Treatment Law, 5741-1991, marked a significant change of approach in protecting the rights of mentally ill persons, primarily with regard to involuntary commitment but also with regard to the patient's rights once hospitalized. Under the new law, the District Psychiatrist or someone authorized by him may commit a person to involuntary hospitalization only after having performed a psychiatric examination, which the person may be compelled to undergo. The law distinguishes between "urgent" and "non-urgent" involuntary hospitalization. In the first case, the District Psychiatrist may commit a person immediately to a psychiatric hospital if he determines that the person is mentally ill in such a manner that substantially impairs his judgement or his reality testing, and that as a result he is likely to pose an immediate physical danger to himself or to others.

228. The director of a hospital may involuntarily hospitalize a person for a period of up to 48 hours, even without an order of hospitalization from the District Psychiatrist, if he determines, on the basis of a medical, physical and psychiatric examination, that the person fulfills the criteria for urgent involuntary commitment. At the end of 48 hours, the person must be released, unless a commitment order has been issued within that time or the patient agrees to be hospitalized voluntarily (sect. 5 of the Law).

229. In the case of a minor, the District Psychiatrist may, at the request of a child welfare worker, order the child to undergo an urgent psychiatric examination prior to commitment if in his view there is prima facie evidence that the minor is mentally ill or mentally disturbed, and such illness or disturbance is likely to pose a physical danger (as opposed to an "immediate" physical danger) to himself or to others. All such examinations of minors must be performed by a psychiatrist specializing in children and adolescents (sect. 6 of the Law).

230. The District Psychiatrist may order a person who refuses to be tested to undergo a "non-urgent" involuntary examination if he deems that there is evidence to indicate that the person is mentally ill in such a manner that substantially impairs his judgement and reality testing; and that he is likely to pose a physical danger to himself or others that falls short of being "immediate", or his ability to take care of his basic needs is severely impaired, or he is causing severe mental suffering to others in such a manner that impairs his maintenance of a normal functioning, or he causes severe damage to property (sect. 7 of the Law). Such a "non-urgent" examination order remains valid for a period of 10 days, during which the person is to undergo the examination; if the examination bears out the conclusion that the person is in fact mentally ill in the above manner, and as a result is likely to pose a "non-immediate" danger to himself or to others, then he may be committed within 24 hours.

231. The District Psychiatrist may order the involuntary commitment of a person only for a period of seven days, which he may extend for another seven days at the detailed, written request of the director of the hospital in which the patient is confined. He must also notify the Attorney-General or his representative of any hospitalization orders. After the initial period of 14 days, involuntary hospitalization may be extended only by decision of the District Psychiatric Committee, which is composed of a lawyer and two psychiatrists, one of whom is a public servant (sect. 24 of the Law). The District Committee may extend the involuntary hospitalization for a period of up to three months, and thereafter for subsequent periods of three months, if they are convinced that the patient still meets the criteria for commitment mentioned above.

232. The new law also provides the District Psychiatrist with the power to order the patient to undergo involuntary outpatient treatment, instead of hospitalization, for periods of up to six months.

233. A hospitalization or involuntary outpatient treatment order issued by the District Psychiatrist may be appealed by the person committed or any other person before the District Psychiatric Committee. Appeals are heard within five days of their submission. In all proceedings before the Committee, the patient and his lawyer may be present, as well as additional persons at the Committee's discretion, and may raise claims on the patient's behalf. If the Committee decides to extend the involuntary commitment of a patient for a period exceeding three months, then the patient, his relative or guardian has the right to demand an additional hearing after three months have passed. All decisions of the District Psychiatric Committee are appealable as of right to the District Court, and thereafter to the Supreme Court by leave.

234. Judicial decisions interpreting the District Psychiatrist's powers of involuntary commitment have stressed that the evidence of the patient's inability to function, and of the danger posed to himself or to others, must be specific and well founded in order to justify such a deprivation of liberty, especially in view of section 5 of Basic Law: Human Dignity and Liberty, noted above. See, e.g., App. No. 81/92, *Anonymous* v. *Attorney-General et al.*, P.D.M. 5753, vol. 3, p. 221 (judgement of the Jerusalem District Court). Mere general statements that a person has attacked others is insufficient; specific incidents must be described in detail, including dates, the severity of the incident, the persons involved, the degree of provocation, and so on (ibid.).

235. Over the period between 1988 and 1995, the number of involuntary hospitalization orders issued by the District Psychiatrist remained fairly stable, between 1,300 and 1,600 per year, while the total number of psychiatric hospitalizations rose steadily, from 11,286 in 1988 to 15,515 in 1995.

236. **Court-ordered hospitalization**. In the context of criminal proceedings, a court may order the hospitalization of a mentally ill detainee for the period of his detention, and may order the hospitalization or outpatient treatment of a defendant who is found unfit to stand trial due to mental illness. If a defendant has been found guilty of a criminal offence, but the Court declares that he is not eligible for punishment because he was mentally

ill at the time he committed the offence, then the Court may order his involuntary hospitalization or treatment if he is still ill. The law imposes no time limit for such involuntary hospitalization; however, judicial decisions have clarified that court-ordered hospitalization may extend only so long as the convict poses danger to himself or to others. Cr.A. (T.A.) 613/95. *Malca* v. *Attorney-General et al.* (not yet published), issued 20 October 1995.

237. **Restrictions on treatment and other rights of the patient**. All patients in psychiatric hospitals are entitled to send and receive closed letters, to have visitors, to maintain contact with persons outside the hospital and with their lawyers, and to hold personal effects and wear their own clothes, in accordance with terms set by the director of the hospital.

238. Solitary confinement and physical restraint of a patient may be done only to the extent required for his medical treatment, or to the extent necessary to prevent danger to himself or others. Such measures must be authorized in writing by a doctor, except in cases of emergency when a doctor is not present, in which case a nurse may order such measures (sect. 34 of the Law). If the nurse orders the patient to be placed in restraints, then a doctor must be found as quickly as possible to approve the measure; if the doctor does not approve the use of restraints, then the patient must be released from them immediately. Restraints may be ordered for a period of up to four hours, and then for subsequent periods of up to four hours, subject to an examination by a doctor at the end of each period (Regulation 29 of the Mentally Ill Treatment Regulations, 5752-1992).

239. Electric shock therapy may be used on patients only if the following conditions have been met:

(a) Three doctors at the hospital, including the hospital director or his deputy, the director of the department in which the patient is hospitalized or his deputy, and the director of the clinic at which the patient is treated, have all decided that electric shock therapy is indicated;

(b) The patient has undergone a physical examination by a doctor, and appropriate tests do not evince any contra-indications to electric shock therapy;

(c) The patient or his guardian has consented in writing, if the patient voluntarily hospitalized himself.

Electric shock may be administered only under anaesthetics, with necessary safety measures, and medications to relieve post-administration symptoms must be on hand.

Experimentation on human beings

240. The Helsinki Declaration regarding Guidelines for Doctors in Biomedical Research Involving Human Beings of 1964, as amended in Tokyo in 1975, has been implemented directly in Israeli legislation by the National Health (Medical Experiments on Human Beings) Regulations, 5741-1980, which actually includes

the text of the Helsinki Declaration. Regulation 2 of the above Regulations stipulates explicitly that no medical experimentation may be done on human beings in a hospital in violation of the Helsinki Declaration.

241. Under the implementing legislation, medical experiments are defined as:

> "(1) Use of a medication, radiation or a chemical, biological, radiological or pharmaceutical substance, in contradiction to the approval given for such substance by legislation, or when said use is not accepted in Israel for the purposes for which the use is requested, or has not yet been tried in Israel, and such use has, or is intended to have, an effect on the health, body or mental health of a person or employee, or a part thereof, including genetic structure;
>
> "(2) Any proceeding, action or examination regarding a human being which is not commonly accepted."

Such medical experiments may be performed only if the Director-General of the Ministry of Health approves them. The Director-General's approval, in turn, is contingent upon fulfilment of the following conditions:

(a) The "Helsinki Committee" of the hospital in question has approved the experiment. This committee is composed of a member of the clergy or a lawyer, three medical directors of departments at the hospital with the rank of professor at a recognized medical school, one of whom is a specialist in internal medicine, and another doctor who represents the hospital's management;

(b) The Director-General is convinced that the experiment is not in violation of the Helsinki Declaration or the Israeli regulations;

(c) The Medications and Foods Department of the Health Ministry or the "Supreme Helsinki Council" has rendered its opinion regarding experiments involving genetic structure, artificial fertility treatments, or other types of experiments. The "Supreme Helsinki Council" is composed of one lawyer, one member of clergy, six professors, of whom three are medical doctors, and the Director-General or his representative, provided that they are also physicians.

242. Under article 9 of the Helsinki Declaration, which is an operative part of the regulations mentioned above, every person who may be a subject in a medical experiment must give his or her informed consent thereto, preferably in writing, and may cease to participate in the experiment at any stage. In cases in which the patient may have a relation of dependency with the doctor who requests his informed consent, or in which the patient might consent under duress, another doctor uninvolved in research must request the patient's consent. Persons lacking legal capacity may serve as subjects in medical experiments only if their legal guardian, or relative responsible for their welfare, consents on their behalf (article 11 of the Helsinki Declaration).

Article 8 - Prohibition of slavery

243. Israel is a party to the Geneva Slavery Convention of 1926 and the Amending Protocol of 1953 (ratified 12 September 1955); to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (ratified 23 October 1957); to the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (ratified 28 December 1950); and to International Labour Organization Convention No. 105 concerning the abolition of forced labour.

244. The principal legislative prohibitions against slavery or servitude are contained in the Penal Law, 5737-1977. Section 376 of the Penal Law, entitled "forced labour", provides: "A person who unlawfully compels another to work against his will is liable to imprisonment for one year." Other sections of the Penal Law, prohibiting kidnapping and false imprisonment, may be invoked against a person who detains or otherwise limits the freedom of movement of another person, including with the intention of imposing conditions of servitude or slavery upon him.

245. Slavery and servitude would also seem clearly to be prohibited by section 9 of Basic Law: Human Liberty and Dignity, under which "[t]here shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or by any other means". Furthermore, every employee is entitled to the full protection of Israel's labour laws, which provide extensive protection regarding hours of work and rest, overtime pay, vacation and sick days, payment of wages, prohibition of work on rest days and holidays, and many other substantive safeguards, including protection of the right to strike. These employment guarantees are discussed more fully in Israel's Initial and First Periodic Report under the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.39), as well as under article 21 of the present report.

246. Israeli law does not allow hard labour to be imposed as the punishment for a crime. Incarcerated convicts are required to work at tasks or jobs which do not involve hard labour (Penal Law, sect. 48) unless an Exemptions Committee of the Prisons Service releases them from the obligation for reasons of rehabilitation, health or other reasonable grounds. In practice, prisoners are generally not required to work without their consent. Prisoners' hours of work and rest are subject to the same restrictions as any employee under the Hours of Work and Rest Law, 5711-1951, and they are paid at the minimum wage. Prisoners with health-related limitations may only perform work approved by the prison medical officer (Prisons Regulations, 5737-1978, regulation 14).

247. Detainees who have not been convicted of a crime, and persons sentenced to imprisonment in the context of civil proceedings (for example, due to contempt of court), may perform work only at their consent (Prisons Regulations, regulation 17).

248. All work performed by convicts, detainees and other prisoners is supervised by the director of the prison in which they are incarcerated.

249. The sentencing provisions of the Penal Law, 5737-1977, allow for two types of punishment, less severe than incarceration, which involve the performance of work. Under section 51 A of the Law, a court which has sentenced a criminal defendant to imprisonment for a period not exceeding six months may, at the defendant's consent, decide to substitute incarceration for part or all of that period with "service work" outside the prison at a public institution or private workplace determined by the Director of the Employment Service. The convict may live at home during the period of "service work", and receives wages unless he or she is serving the sentence at a public institution. A person convicted of a crime but not sentenced to imprisonment may be required to perform "community service" work during his spare time at no pay, for a number of hours to be determined by the court (sect. 71 (A) of the Penal Law). "Public service" may also be imposed on a person whom the court has found to have committed a crime, without convicting him (sect. 71 A (b) of the Penal Law); generally, this provision is used as a measure of leniency, to enable the defendant to avoid having a conviction in the Criminal Register, even though the court could lawfully convict him. Public service works are supervised by parole officers of the Ministry of Labour and Social Affairs. Neither of the alternative sentences mentioned involve hard labour. Typically, they are performed at places such as hospitals, institutions for disabled youths, government boarding schools, and the like.

250. International Labour Organization Convention No. 105, to which Israel is a party, requires ratifying States to undertake to suppress and not make use of forced labour in five specific cases: as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilizing and using labour for purposes of economic development; as a means of labour discipline; as punishment for having participated in strikes; and as a means of racial, social, national or religious discrimination. As discussed in Israel's periodic reports to the ILO under this convention, and in the preceding paragraphs, forced labour is not used in Israel, either generally or for any of the purposes prohibited by ILO Convention No. 105.

Military Service

251. Most Israeli citizens and some permanent residents are required to perform regular and reserve military service under the Security Service Law [Consolidated Version], 5746-1986. Those exempted from obligatory military service include those with physical disabilities or mental illness, and women who declare that requirements of religion or conscience prevent them from performing military service. A portion of women granted such an exemption choose to perform one or two years of "national service" at a public or private institution. Orthodox Jewish men who commit themselves study in a religious institution and not to work during that period receive annual postponements of military service upon application. Approximately 30,000 such postponements were granted in 1997. If the orthodox student receives annual postponements up until the maximum age of conscription, then he is fully exempted from military service. Some such students elect to postpone their

service for several years while they pursue religious study exclusively, and then are conscripted later, generally for a shorter period than the usual three-year tour of duty.

252. Israeli Muslims are generally not conscripted into military service, though they may serve as volunteers. Druze and Circassian men perform regular and reserve military service, while Bedouins may serve as volunteers. Christians are generally not conscripted, unless they are *olim* under the Law of Return. The influx of immigration from the former Soviet Union has resulted in an increase of Christian conscripts, as in many of those families one or the other spouse, or parent, is Christian.

253. The period of regular military service for men who are conscripted between the ages of 18 and 26 is currently three years; those conscripted between the ages of 27 and 29 serve for a period of between 24 and 30 months. Women conscripts between the ages of 18 and 26 perform two years of regular military service; married women, mothers and pregnant women are released from their military service obligations.

254. After discharge from regular military service, men and women may be obligated under the Security Service Law [Consolidated Version], 5746-1986, to perform up to 30 days of reserve service. Under internal IDF guidelines, the actual length of annual reserve service, and the age until which one must perform it, are set according to the specific reserve position and rank of the soldier, among other factors. Under section 1 of the Law, men may be obligated to perform reserve service up until the age of 54, and women up until the age of 38. In practice, the vast majority of women soldiers are completely exempted from reserve service, while most of the remaining women soldiers may serve for brief annual periods up to the age of 24.

255. As mentioned in respect of article 4, emergency legislation allows for the call-up of employees and professionals in various institutions and industries deemed essential, to enable their uninterrupted operation when circumstances related to the state of emergency make it necessary to do so.

Article 9 - Liberty and security of person

256. From its inception, the State of Israel has regarded the right of personal liberty as fundamental to the nature of its political and social order. The Declaration of Independence of 14 May 1948, provides that the "State of Israel ... shall be founded on the principles of liberty, justice and peace as envisioned by the prophets of Israel ...". Until recently, in the absence of a formal bill of rights, this clause in the Declaration constituted the basis on which the Supreme Court developed rules for protection of personal liberty, including with regard to arrest and detention. At the same time, a thorough body of legislation was developed to ensure that restrictions of liberty in the context of arrest or detention are strictly circumscribed; the principal legislative landmarks in this regard were the Criminal Procedure Law [Consolidated Version], 5742-1982, the Criminal Procedure (Arrest and Searches) Ordinance [New Version], 5729-1969.

257. With the enactment of Basic Law: Human Dignity and Liberty in 1992, the right to personal liberty was accorded formal constitutional status. Section 1 of the Basic Law provides:

> "Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all person are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel."

Arrest and Detention

258. The purpose of the Basic Law, as defined in section 1 A, is "to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic State". Section 5, entitled "Personal Liberty", stipulates that "there shall be no deprivation or restriction of the liberty of a person by imprisonment, detention, extradition or otherwise". This substantive right is qualified by the saving clause in section 8, which prohibits any derogation therefrom "except by a Law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required, or by regulation enacted by virtue of express authorization in such Law". While legislation enacted prior to the Basic Law remains valid, it is interpreted in light of the substantive rights and principles in the Basic Law. New legislation, on the other hand, may be invalidated by the Supreme Court to the extent that it violates the principle of human liberty, including in the context of arrest and detention.

259. Following the enactment of Basic Law: Human Liberty and Dignity, several significant legislative efforts have been made in the area of arrest and detention, culminating in the enactment of a series of interrelated statutes, as well as new standing orders for the Police and Prisons Service. The most significant of such recent statutes for the purposes of this article, the Criminal Procedure (Powers of Enforcement - Arrest) Law, 5756-1996, comprehensively treats all phases of the detention process with the declared purpose of "ensuring maximal protection of a person's liberty and rights" (sect. 1 (b) of the Law). The provisions of the new statute apply to arrest and detention under any law, unless the other law specifically indicates otherwise.

Arrest by warrant

260. A judge may issue an arrest warrant only if he is convinced that there is a reasonable suspicion that the person committed a felony or misdemeanour, and that one of the following grounds applies:

(a) There are reasonable grounds to suspect that the suspect's release or non-arrest will result in the obstruction of the criminal investigation or trial, in the suspect's evasion of the investigation, trial or sentence, or will lead to concealing of property, tampering with witnesses or with evidence in another manner; however, in such cases the court must also be satisfied that the objective of the arrest cannot be achieved by setting bail or other conditions which will be less restrictive of the suspect's liberty;

(b) There are reasonable grounds to suspect that the suspect will endanger the safety of a person, public safety or national security;

(c) The court is satisfied, for special reasons that shall be recorded, that it is necessary to take investigative measures that cannot be taken unless the suspect is under arrest; in such cases the Court cannot order an arrest for more than five days, unless it deems that the investigative procedures contemplated cannot be carried out in that period, in which case it may order a longer period of arrest, or extend the original period, for a total of not more than 15 days.

(Criminal Procedure Law (Enforcement Powers - Arrest) Law, 5756-1996, sect. 13.)

261. An application for an arrest warrant must be submitted in writing by a police officer, supported by a sworn statement or affidavit which confirms the facts and information on which the application is based. The application must include details of previous arrests, copies of previous applications for arrest warrants against the suspect in the same matter and the minutes of court hearings on those earlier applications (ibid., sect. 15). In urgent cases, the judge may hear the application for the warrant without seeing the copies of earlier warrant requests and minutes of the hearings, if he or she is satisfied that enough information has been submitted to enable a decision; in such instances, the length of the arrest cannot exceed 24 hours (ibid., sect. 15 (b)).

262. The Court bears a clear obligation to review the evidence on which the warrant application is based, and must issue a reasoned written decision (ibid., sect. 12).

263. The arrest warrant must include, in addition to basic identifying information, the arresting officer's identity, the description of the alleged offence, the specific grounds for arrest, the precise date and time when it was issued and when it lapses, as well as a statement of the arresting officer's obligation to bring the suspect before the court as soon as possible, unless the person is released before an initial hearing (ibid., sect. 18).

Arrest without a warrant

264. The new Arrest Statute sets out a series of strict procedural safeguards which must be followed in the event of arrest without a warrant. A police officer is empowered to arrest a person without a warrant if he or she has reasonable grounds to suspect that the person committed a felony or misdemeanour, and if one of the following applies:

(a) The person committed an offence for which he or she may be arrested in the police officer's presence or very shortly beforehand, and the officer believes that as a result the person is likely to endanger the safety of a person, public safety or the security of the State;

(b) The police officer has reasonable grounds to suspect that the suspect will not appear for the criminal investigation, or that the suspect's

release or non-arrest will result in a disruption of legal proceedings, including concealment of property, tampering with witnesses or tampering with evidence in another manner;

(c) The person is suspected of having committed one of the following offences:

(i) An offence which carries a sentence of death or life imprisonment;

(ii) Certain security-related offences;

(iii) Narcotics offences other than those involving use or possession for personal use;

(iv) An offence committed with severe violence or cruelty, or with a firearm or other weapon;

(v) A violent offence against a family relative under the Family Violence Prevention Law, 5751-1991;

(d) There are reasonable grounds to suspect that a person released on bail has violated the terms of the release, or is about to abscond from legal proceedings, or has escaped lawful custody;

(e) The police officer lawfully attempts to detain a person for questioning at the police station, but the person does not comply with the officer's instructions or interferes with lawful detaining for questioning;

Arrest without a warrant, on the grounds described above, may not be done if it is sufficient to bring the person to the police station for questioning (ibid., sect. 23).

265. **Unlawful arrest and resistance to arrest**. At the time of arrest, the arresting officer must identify himself or herself to the suspect, inform the suspect immediately of the fact of the arrest, and, as soon as possible in the course of the arrest, explain the reasons therefor. If these requirements are not met, then as a rule the arrest is not lawful, and the suspect is not deemed to be in lawful custody. As a consequence of the fundamental right to liberty, any person may take reasonable actions to avoid or resist an unlawful arrest as he or she would against an assailant by fleeing, use of reasonable force or other means, and the arresting officer may be sued for assault or false imprisonment under the Civil Wrongs Ordinance (Cr.A. 136/51, *Frankel* v. *State of Israel*, 8 P.D. 1604). Full notification at the time of arrest may be delayed, however, if it is likely to undermine the carrying out of the arrest, to endanger the arresting officer's safety, to result in concealing of evidence, or if the officer's identity and the nature of the offence are obvious under the circumstances (ibid., sect. 24).

266. The powers of a police officer to arrest without a warrant may be delegated to other public servants by order of the Minister of Police (now the Minister of Internal Security). At present, arrest powers have been granted

to 21 different groups of public servants, such as income tax investigators, port authority guards, municipal inspectors, civil guards, prison wardens, and so on.

267. **Bringing the person under arrest to the police station**. Persons arrested without a warrant must be brought immediately to a police station and placed under the authority of the station officer in charge of investigations, or the station commander, unless the person is released beforehand. The duty to bring the suspect immediately to the police station may be qualified if the suspect is in urgent need of medical treatment, or if the police officer's presence is urgently needed in another place to prevent injury or death to a person, or severe harm to public safety or national security, if the needs of the investigation so require, or if the suspect consents to go with the officer to another place in order to seize evidence or prevent its destruction. As soon as such mitigating considerations have lapsed, then the suspect must be brought immediately to the police station (ibid., sect. 25).

268. Once the suspect is brought to the police station, then the officer-in-charge bears a duty to examine whether there were indeed adequate grounds for arrest without a warrant; if those grounds are not met, then the person must be released immediately, unless any of the grounds applicable to arrest with a warrant apply, in which case the officer-in-charge must explain these considerations to the suspect, and then arrest him or release him on bail. The officer-in-charge may not continue the arrest or release the suspect on bail, or set bail conditions, without first having given the person an opportunity to raise his or her claims, after having warned the person of the right to remain silent and that anything that he or she may say may be used as incriminating evidence, and that abstaining from responding to questions may be used as corroborating evidence (ibid., sect. 28 (a)). If the person's attorney is present at the time of the decision by the officer-in-charge, then he or she may also raise oral claims in regard to the arrest or release on bail (sect. 28 (b)). If the officer-in-charge decides to arrest the suspect, then he must immediately explain to the suspect that he is under arrest, the reasons for the arrest, the length of time until the suspect will be brought before a court or released, the suspect's right to have notice of the arrest sent to a close friend or relative and to his attorney, and the right to see an attorney, except in certain extreme circumstances, as discussed below (ibid., sect. 32).

269. In all cases of arrest without a warrant, the officer-in-charge of the police station must prepare a detailed report of all actions taken in respect of the arrest itself, notification of rights, the investigation, decisions regarding the right to meet with legal counsel, the suspect's statements, and so on (sect. 37).

270. **Notification of arrest**. If a person is arrested, notice must be given promptly to a friend or relative who can reasonably be located, unless the detainee asks that such notice not be sent (ibid., sect. 33). At the request of the person under arrest, notice will also be sent to an attorney of his or her choosing, or to one of the defence attorneys appearing on a list drawn up by the Bar Association and presented to the suspect; if the Minister of Defence gives written confirmation that State security so requires, then notice may be sent only to an attorney who has proper security clearance under

the Military Justice Law, 5715-1955. By decision of a District Court judge, notification of a person's arrest for certain security-related offences or for other offences carrying a penalty of at least 10 years' imprisonment may be delayed for up to 48 hours, or be delivered only to a person whom the judge determines, if the Minister of Defence certifies in writing that national security requires that the arrest be kept secret, or if the Inspector General of the Israel Police certifies in writing that the success of the investigation so requires. If the Minister of Defence or Inspector General of the Police are still convinced that an additional delay is necessary for the above reasons, they may apply to the District Court for subsequent 48-hour delays, up to a total of seven days. In the case of certain defined security-related offences, notification may be delayed for a total of 15 days, provided that the Minister of Defence certifies in writing that national security so requires.

Consultation with legal counsel

271. The detainee has a right to consult freely with legal counsel with all due expediency. (ibid., sect. 34 (a)). With the exception of special cases described below, the detainee must be allowed to meet with his lawyer before a judicial hearing regarding the extension of his detention. Evidence gathered from the detainee through violation of the right to confer with counsel may be invalidated to the extent that the lawyer's absence "resulted in infringement of the detainee's free will in giving his confession". Cr.A. 533/82, *Zakai v. State of Israel*, 38(3) P.D. 66. Meetings with counsel must be held in conditions that ensure their privacy, while allowing supervision of the suspect's movements (Criminal Procedure Law (Enforcement Powers - Arrest) Law, sect. 34 (c)).

272. The realization of the right to confer with legal counsel may be delayed in four sets of circumstances. A senior police officer, of the rank of superintendent or higher, may order, by a reasoned decision in writing, that the meeting with legal counsel shall be delayed for up to several hours if the person under arrest is in the midst of activities related to the criminal investigation, in such a manner that his or her presence is necessary for their completion, and the meeting with counsel will require delaying or postponing those investigative activities, and the officer-in-charge believes that such a delay or postponement is likely to endanger the investigation substantially. An officer-in-charge of similar rank may also order, by reasoned written decision, that the meeting with counsel be delayed for up to 24 hours from the time of arrest, if he is convinced that the meeting with counsel is likely to frustrate or to interfere with the arrest of other suspects in the same manner, or to prevent the discovery or seizure of evidence. The officer-in-charge may delay, once again by reasoned written decision, the meeting with counsel for up to 48 hours after the arrest, if he is convinced that doing so is necessary to protect human life, to prevent commission of an offence, or, in certain security-related offences, that the meeting is likely to interfere with the arrest of other suspects, to disrupt discovery or seizure of evidence, or to interfere with the investigation in some other manner, provided that the detainee has a reasonable opportunity to confer with counsel prior to the initial judicial hearing on his detention (ibid., sect. 35). Finally, persons who are detained on suspicion of involvement in a specific set of security-related offences may be denied the

right to confer with legal counsel for a period of up to 10 days, if the officer-in-charge finds that one of the grounds for a 48-hour delay mentioned above apply. At the request of the person under arrest, notice of the postponement and its length must be given to a person of his or her choosing. The President of the District Court may order that a suspect in such security-related offences not meet with counsel for up to 21 days, if the application is made with the approval of the Attorney-General. Decisions delaying the meeting with counsel in security-related cases for up to 10 days may be appealed before the President of the District Court, or, in his or her absence, before the Deputy President, and may be appealed again, if necessary, to the Supreme Court. Decisions delaying the meeting with counsel for more than 10 days are appealable directly to the Supreme Court (ibid., sect. 35).

First judicial hearing

273. In nearly all cases, a person who is arrested other than in the presence of a judge, and whom the officer-in-charge at the police station does not release, with or without bail, must be brought before a judge as soon as possible, and at most within 24 hours of the arrest; otherwise, the arrestee must be released (ibid., sects. 17 (c), 29). The arrestee or his or her representative may immediately file a motion to release him on bail, in which case the judicial hearing often takes place well before the 24-hour period has elapsed.

274. There are three exceptions to the general requirement that a judicial hearing take place within 24 hours. If an officer in charge of the investigation concludes that urgent investigative actions be carried out, that they can only be done while the suspect is under arrest, and that they cannot be postponed until after the suspect is brought before the judge, then the judicial hearing may be postponed for up to an additional 24 hours. In the case of certain specified security-related offences, it is sufficient to show that urgent investigative actions are necessary to postpone the initial judicial hearing for the additional 24-hour period.

275. The second set of exceptions to the 24-hour limit relates to arrest just prior to or in the midst of the weekly Sabbath or religious holidays. If the 24-hour limit expires during the Sabbath or a holiday, then the person under arrest should be brought before a judge before the Sabbath or holiday commences - that is, before 24 hours have passed from the time of arrest - unless a senior police official confirms that, due to special needs of the investigation, it is not possible to do so, in which case the initial hearing must take place no later than four hours after the end of the Sabbath or holiday. Sometimes, however, the holiday itself lasts two days, or it falls immediately after the Sabbath. If these holiday and Sabbath days together last longer than 48 hours, and the arrestee was not brought before the court prior to their commencement, then the initial hearing must take place as soon as possible after the end of the Sabbath or holiday, or within 24 hours after the arrest, whichever is later; if the Sabbath and holiday together are longer than 72 hours, then the initial hearing must take place within 32 hours of the arrest. If, finally, the person under arrest requests that the initial hearing be delayed until after the end of the Sabbath or the holiday, then the initial hearing shall be held as soon as possible after the end of the Sabbath or the holiday (ibid., sect. 29).

276. The other exception relates to certain security-related offences, such as treason and espionage, in which case a senior police officer may order the person to be detained for up to 15 days before he is brought before a judge (see, e.g., Penal Law, sect. 125).

277. At the initial judicial hearing, which usually takes place before a single judge of the Magistrate's Court, the judge must first review the evidence brought by the police to see if there are indeed reasonable grounds to suspect that the detainee in fact committed a crime. The detainee or his counsel may cross-examine the police officer appearing on behalf of the State in this regard. In addition, the court must decide whether or not there exist legitimate grounds to keep the suspect in detention, which may be grouped roughly under three separate categories:

(a) To ensure the integrity and efficiency of the criminal investigation - for example, if there are grounds to believe that the suspect may flee, may destroy, tamper with or conceal evidence, or influence witnesses;

(b) The severity of the offence - in terms of its scope and nature, the damage allegedly caused, the punishment prescribed by law, or particular aggravating circumstances, such as alleged use of violence, employment of a minor or a mentally incompetent person to commit the offence, arrest *in flagrante delicto* for a serious offence, and so on;

(c) A special public interest in detention of the suspect - including judicial policy regarding widespread offences, such as car theft; concern that the suspect will repeat the offence.

278. The Court will also weigh "external" considerations, such as the detainee's age (Cr.M. 190/79, *Doron* v. *State of Israel*, 33(3) P.D. 889), health (Cr.M. 242/66, *Amar* v. *State of Israel* 20(4) P.D. 584), financial needs (Cr.M. 12/55, *Abu Ghosh* v. *State of Israel*, 9 P.D. 195), the need to care for children in the case of a female detainee (Cr.M. 82/83, *Alia* v. *State of Israel*, 37(2) P.D. 742), past criminal record (as an indication of the danger that the investigation may be subverted or that there is a public interest in detaining the person) (Cr.M. 1/73, *Lavi* v. *State of Israel*, 27(1) P.D. 254), use of violence by the police against the suspect during investigation (Cr.M. 34/79, *Hazan* v. *State of Israel*, 33(1) P.D. 557), the time that has elapsed between the commission of the offence and the detention hearing (Cr.M. 273/78, *Attias* v. *State of Israel*, 32(3) P.D. 582), the expected duration of the detention (particularly in cases where the offence in question is not very grave)(Cr.M. 693/84, *Levitan* v. *State of Israel*, 40(10) P.D. 551), and other considerations.

279. The court may decide to extend the detention, to release the suspect outright, or to release the suspect on bail; the court may impose conditions on the suspect's release on bail intended to ensure appearance for the investigation, such as depositing the suspect's passport, limitations on freedom of movement, partial or total house arrest, compliance with a "protective order" in cases of family violence, preventing the suspect from having contact with family members or from living at the family house, deposit of a weapon in cases of violent offences, treatment for drug abuse, or

periodic appearances at the police station (ibid., sect. 48). The court may also issue an order preventing the suspect's departure from Israel, if there is a reasonable possibility that the suspect will not appear for the investigations, and his or her appearance cannot be ensured by bail or by other conditions. The new statute requires that all conditions of bail and release do not exceed what is necessary in order to achieve the purposes of imposing bail (ibid., sect. 47).

280. **Period of arrest before indictment**. In the event that the court does not release the suspect at the initial hearing, it may order continued detention for a period of up to 15 consecutive days. If, at the end of this period, the police still wish to keep the suspect in detention for purposes of the criminal investigation, then another hearing is held, and the court's decision is based on the standards noted above; however, the longer the detention, the more weighty the evidence that the suspect actually committed the crime must be in order to justify extending the remand. The total period of detention based on police requests may not exceed 30 days. Detention may be extended beyond the 30-day period only by a decision of the court upon a special motion signed by the Attorney-General.

281. A person under arrest will be released when the criminal investigation against him or her is completed, except if the prosecution notifies the court that a charge sheet is about to be filed, and the court is satisfied that there are prima facie grounds for remand until the end of trial, in which case the court may extend the arrest for a period of not more than five days, during which the charge sheet will be filed; these five days are not in addition to the 30-day period described above, but included within it.

282. **Maximum period of arrest prior to indictment**. Except in certain security-related cases, discussed below, a person must be released from arrest, with or without bail, if a charge sheet has not been filed within 75 days from the time of arrest (ibid., sect. 59), unless a single justice of the Supreme Court orders that the arrest be extended or renewed for subsequent periods of not more than 90 days each.

Appeals

283. All decisions of the court regarding extension of detention, bail, or other conditions of release may be appealed to a higher judicial instance. If the detainee claims that there are "new facts" or "changed circumstances", if considerable time passed since the decision was handed down, or if the person is in detention because of an inability to post bail, then he or she has the right to a "reconsideration" of any decision before the same court that rendered it (ibid., sect. 52). The lower court's decision on "reconsideration" may itself be appealed to a higher instance. If the appeal is to the District Court, the detainee also has a right of second appeal to the Supreme Court.

Court-appointed counsel

284. Prior to the filing of a charge sheet, Israeli law requires court appointment of legal counsel for a person in detention who is mentally ill (Criminal Procedure Law [Consolidated Version], 5742-1982, sect. 15: Mentally

Ill Treatment Law, 5751-1991, sect. 18), or under 16 years of age, or when it is necessary to take testimony prior to filing the charge sheet, and the detainee is either blind, deaf, dumb or mentally disabled, or when the detainee is suspected of murder or another offence bearing a penalty of 10 years or more (Criminal Procedure Law, sect. 15 (a)). In cases where there is no obligation to appoint legal counsel for a detainee, a court may decide at its discretion to appoint counsel if the detainee has insufficient financial means to do so, if the offence involved bears a penalty of at least 10 years' imprisonment, if the detainee is blind, deaf, dumb or mentally incapacitated, or if for any other reason the court deems that the detainee is unable to manage his own defence adequately (ibid.).

285. Since its establishment in 1995, the Public Defender's Office has established itself in several judicial districts, with on-call public defenders available to represent detainees, among others, at all stages of their detention, and representatives at the various courts to make the process of appointing defence counsel for detainees who qualify under the Public Defender Law, 5755-1995, more efficient.

286. The obligation to appoint counsel for a defendant after a charge sheet is filed is discussed below.

Arrest and detention under other legislation

287. In addition to the general authority noted above to arrest and detain criminal suspects, there are several specially defined circumstances in which police officers or other security personnel may arrest and detain a person for security-related offences.

288. Under sections 124-125 of the Penal Law, 5737-1977, a person suspected of treason or espionage under the relevant provisions of the Penal Law may be arrested and detained without bail for a period of up to 15 days before being brought before a judge by order of a senior police officer. On the application by the Attorney-General, a single judge of the Supreme Court may order the arrest of a suspect in such cases for a period of up to 30 days before a detention hearing on the merits, and may extend such arrest for additional periods of up to 30 days, provided the total period of arrest before the detention hearing is no more than four months.

289. The Defence (Emergency) Regulations, 1945 (hereinafter "DER") also have special provisions regarding arrest and detention of persons suspected of having committed an offence thereunder. Any soldier or police officer may arrest, without a warrant, a person whom they witness committing an offence under these Regulations, or whom they have reasonable grounds to believe has committed such an offence. When the offence involved is one over which jurisdiction lies with the special military court under the Regulations, then the arrest is made by a warrant, which may be issued by a Magistrate's Court judge, an officer of the IDF or the officer-in-charge of a police station (Regulation 16 (1) of the Defence (Emergency) Regulations). Most arrests made under the DER are treated like ordinary arrests - that is, the person must be brought before a Magistrate's Court judge or before the officer-in-charge of a police station immediately, and in any case must be brought before a judge within 48 hours to review the legality of the detention, as discussed below.

The only exception obtains with regard to offences under the DER for which jurisdiction rests **exclusively** with the special military court; in such instances, the president of the military court may approve a deviation from the normal procedures, and the person may be brought directly before the military court, instead of the Magistrate's Court, for review of the detention and further proceedings (DER, regulation 17).

290. It may be noted that Regulation 132 of the DER allows for arrest and detention for up to seven days, by order of a police captain, of a person who is found in "suspicious circumstances" and is not able to give an adequate account of his doings at that place.

291. Under the Search Powers in Time of Emergency (Ad Hoc Provision) Law, 5729-1969, police officers, soldiers, and authorized civil defence personnel may, in the course of carrying out searches during a time of public emergency, arrest a person who refuses to allow a search or to come in for questioning, and who is suspected of unlawfully harbouring a knife, firearm or explosive (Search Powers in Time of Emergency (Ad Hoc Provision) Law, sect. 2 (c)).

292. Administrative detention is discussed under article 4.

293. The Extradition Law, 5714-1954, provides for arrest, by written order of the Attorney-General or a senior police official, of a person when there are grounds to believe that he or she is subject to extradition. The person must be brought before a judge within 48 hours, and may be detained for additional periods of up to 15 days each. Any extension of detention beyond 30 days must be filed by the Attorney-General, and in any case a formal request for extradition must be filed within 50 days. See H.C.J. 182/72, *Marenhal* v. *Attorney-General*; Extradition Law, section 22.

294. Arrest and detention may also be employed by courts as a means to secure the orderly conduct of legal proceedings. For example, a court may issue a warrant to compel the attendance of a defendant or witness who has been summoned to a trial but failed to appear. If such a person is not released on bail by the police, then he or she may be arrested and brought before a judge, who may decide to detain the person, and for how long, or to release on bail. A judicial arrest warrant may be issued against a person in the context of contempt of court proceedings, either if that person does not appear in court for a hearing in proceedings against himself or herself, or refuses to comply with a judicial decision (Contempt of Court Ordinance, sect. 5).

295. The law and procedure regarding imprisonment of a judgement debtor is discussed under article 11; arrest of a person in the context of deportation proceedings is discussed under articles 12 and 13. Under the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953, a person may be imprisoned, at the request of the Attorney-General, in order to compel compliance with a Rabbinical Court order to give or accept a letter of divorce under Jewish religious law, or to release the widow of a man's brother from levirate obligations (*halitza*). A person may also be imprisoned as an alternative to payment of certain criminal fines.

Remand after a charge sheet is filed (until the end of trial)

296. In the event that the District Attorney decides to file a charge sheet against the suspect in detention, then a request may be filed with the court, together with the charge sheet, to remand the defendant until the end of trial. The standards for ordering detention until the end of trial, while similar to those for arrest during investigation, are stricter and more thorough in several basic respects, as is necessary in view of the severe restriction on liberty entailed by remand until the end of trial.

297. One precondition for detention until the end of trial is that the defendant must be represented by legal counsel at the remand hearing, unless he or she has clearly stated a wish to represent himself or herself. In the latter case, the court must try to convince the defendant to be represented by counsel, either of the defendant's own choosing or appointed by the court, and must be convinced that the defendant is in fact capable of adequately managing his or her own defence. If it is not so convinced, then it may appoint defence counsel on its own initiative. In practice, however, it is extremely rare that a defendant represents himself or herself at the remand hearing. The court will delay the hearing until the defendant (who wishes to be represented) has found counsel of his or her choice, or the court has appointed counsel to whom the defendant consents, for a period of up to seven days, which may be extended for additional similar periods not totalling more than 30 days. In the event of such delay, the court will hold a preliminary hearing without counsel to see whether the other criteria for detention are met, so as to determine whether there are grounds to detain the defendant until he engages counsel.

298. The first substantive requirement for remand until the end of trial is that prima facie proof exists of the defendant's guilt. Upon filing the charge sheet, and prior to the remand hearing, all evidence gathered during the police investigation that is not classified must be shown to the defendant and his or her legal counsel (Criminal Procedure Law, sect. 74). The court undertakes a thorough investigation into the evidence assembled by the police, to decide whether, on its face, it indeed could support a finding that the defendant is guilty of the offence with which he or she is charged. Although the court will not consider evidence that would be inadmissible at trial, it does not enter into the credibility or weight of the evidence at this stage; rather, it reviews the evidence "as it is", including contradictory evidence and other flaws in the prosecution's case (Cr.M. 901/89, *Ben Hamou* v. *State of Israel*, 43(4) P.D. 526).

299. If the court is convinced that prima facie proof of the defendant's guilt exists, then it considers whether or not there are grounds justifying detention until the end of trial. Section 21 of the Criminal Procedure (Enforcement Powers - Arrest) Law stipulates four general justifications for detention at this stage:

(a) If there is reasonable cause to believe that releasing or not arresting the accused will result in obstruction of justice, in the evasion of trial or punishment by the accused, in concealment of property, tampering with witnesses or with evidence in another manner;

(b) There is reasonable cause to believe that the accused will endanger the security of another person, public safety or the security of the State; certain serious offences are deemed to create a rebuttable presumption that such a danger exists;

(c) The court has released the accused on bail, but the bail has not been deposited to the court's satisfaction, or the defendant has violated a condition of his release on bail, or there exist other lawful grounds for cancelling bail.

(ibid.)

300. Even if the court is satisfied that there are grounds for detention as noted above (with the exception of violation of bail conditions), it may not order the defendant's detention unless it is convinced that the purpose of the detention cannot be achieved by release on bail and by imposing other conditions of release, such as restrictions on freedom of movement, which are less drastic a restriction on the defendant's liberty. As with hearings on detention during the investigation stage, the court will also consider "external" considerations, such as the defendant's personal circumstances, the time that has elapsed since alleged commission of the offence, and so on.

301. After weighing all of the above considerations, the court decides, as a matter of discretion, whether or not to detain the defendant until the end of trial, to release him on bail, or to release him without bail if the sufficiency of the evidence is doubtful.

302. If a defendant is detained after the filing of the charge sheet for a cumulative period of 30 days and the trial has not begun, then he or she must be released, unless the defendant or defence counsel requests a postponement of the opening of trial (ibid., sect. 60). A Supreme Court justice may extend the detention or order the detention anew, for subsequent periods of not more than 90 days at a time, even if the trial has not commenced (ibid., sect. 62). The trial is deemed to have begun when the charge sheet is read in court before the defendant (H.C.J. 304/72, *Ze'evi* v. *State of Israel*, 26(2) P.D. 490). When the defendant or his representative makes an initial appearance to claim that he is unfit to stand trial due to mental illness or disability, the trial will be deemed to have commenced for purposes of the 30-day requirement. (Cr.F. 336/66, *Cohen* v. *State of Israel*, 57 P.M. 321.)

303. If the defendant has been in detention for a cumulative period of nine months following filing of the charge sheet and the court has not issued a verdict, then the defendant must be released (ibid., sect. 61), unless a single justice of the Supreme Court extends or renews the detention for periods of up to 90 days.

304. As with detention decisions prior to filing the charge sheet, any decision regarding detention until the end of the trial or release on bail may be appealed to a higher judicial instance, before a single judge. If the jurisdiction over the offence in question lies with the Magistrate's Court, then the defendant may be able to appeal twice: if the decision on first appeal to the District Court is unfavourable, then he may appeal that decision before a single judge of the Supreme Court. The defendant also may file for a

"reconsideration" of the decision in light of new facts or changed circumstances that ought to have a bearing on his or her detention or terms of release.

305. **Compensation for unlawful arrest**. Persons who are arrested and released without a charge sheet being filed against them may receive compensation from the State Treasury for the detention and for legal expenses if the court finds that "there were no grounds for the arrest" or that "other circumstances justify awarding compensation" (ibid., sect. 38 (a)). The court may also order the person who filed the criminal complaint to compensate the detainee if it finds that the complaint was groundless or made in bad faith. The amount of compensation is fixed in accordance with the average wage. In addition, the detainee may file a civil suit for false arrest under the Civil Wrongs Ordinance, in which case the amount of compensation is not limited by the regulations, but rather subject to the principles of tort law, and generally results in much more substantial compensation awards.

Minors and mentally ill persons

306. The Youth (Adjudication, Punishment, and Modes of Treatment) Law, 5731-1971, sets specific safeguards on arrest and detention of minors. Children under 14 years of age who are arrested must be brought before a judge within 12 hours of arrest, and only for "special reasons" may the officer-in-charge of a police station delay the initial hearing for up to 12 additional hours. Under current law, minors between the ages of 14 and 18 must be brought before a judge within 24 hours of arrest (sect. 10 (2) of the Law), unless such "special reasons" justify a delay of up to an additional 24 hours. Youth are held in a separate detention facility intended especially for minors, or at least in a separate wing of a prison or police lock-up where there is no contact whatsoever with the adult detainees or prisoners. Minors who are detained do not sleep at a police station if there is a detention facility for minors in the area. A minor may not be detained before indictment for more than 10 consecutive days, or 20 days in total, unless the Attorney-General so requests (sect. 10 (4) of the Law). In addition to the grounds for detention applicable to adults, a minor may be detained if doing so is necessary to ensure his or her personal security or to separate the minor from an undesirable person (sect. 10 (3) of the Law). Other special procedures applicable to minors are discussed under articles 10 and 24.

307. **Mentally ill and mentally disabled persons**. Reference is made to the discussion of involuntary hospitalization of mentally ill persons under article 7.

308. In general, for the purposes of arrest and detention in the criminal process, mentally ill and mentally disabled persons are subject to the same law that applies to all adults. However, the Mentally Ill Treatment Law, 5751-1991, contains special provisions regarding the place of detention for such persons, medical examinations and appointment of counsel. If, on the basis of a psychiatric evaluation, the court deems that the suspect has a mental illness which requires hospitalization, then it may order that the suspect will be detained in a psychiatric hospital or in the psychiatric wing of a prison (sect. 16 (a) of the Mentally Ill Treatment Law). Such a hospitalization order may not be given except in the presence of the suspect's

legal counsel; if he or she has no legal counsel, the court must appoint one (sect. 18 of the Mentally Ill Treatment Law). The suspect need not be present at such a hearing if the District Psychiatrist or his or her authorized deputy determines that the hearing cannot be held in the suspect's presence, or that the suspect's mental health would be harmed thereby. (ibid.). The suspect may appeal the hospitalization order to a higher judicial instance, or may apply for "reconsideration" of the order based on new facts or changed circumstances.

309. **Appointment of counsel**. Once a charge sheet is filed against a person who the court believes may be mentally ill, he or she must be represented by counsel in all proceedings. Prior to filing of a charge sheet, such a person must be represented by counsel not only in proceedings related to a hospitalization order, as noted above, but also in any other case in which a detainee is entitled to representation under applicable law. In practice, however, the court almost always will use its discretion to appoint counsel for a mentally ill person in all proceedings during the investigation stages.

Article 10 - Treatment of persons deprived of their liberty

310. As mentioned in the discussion under article 7 above, the right of persons under detention to conditions ensuring basic maintenance of their human dignity is acknowledged as a fundamental right in Israeli law. The enactment of Basic Law: Human Dignity and Liberty in 1992 has spurred significant legislative reform bearing on the treatment of detainees, as well as policy changes in the education, hiring and training of police and prison personnel who deal with detainees. Some of these reforms are discussed under articles 7 and 9 above; others are examined below.

311. The Prisons Service operates 15 incarceration facilities in Israel, 3 of which function as detention facilities and 12 as prisons. From an administrative standpoint, these facilities are divided into three geographic regions (north, central and south), such that in each region there is one maximum-security prison and one detention facility. There is one incarceration facility, named Neve Tirza, for female convicts and defendants bound over until the end of trial. The Israel Police administers nine regional detention facilities; in addition, many of the 60 police stations across the country have several detention cells, generally used for brief detentions or prior to transfer to one of the regional facilities.

312. There is a certain overlap in the types of populations handled by the Police and the Prisons Service. In addition to convicted criminals sentenced to terms of imprisonment, the Prisons Service facilities are used for detention of persons imprisoned in the context of civil proceedings (such as non-payment of alimony or contempt of court); for certain suspects, defendants and convicts in security-related criminal cases; for administrative detainees; and for defendants remanded until the end of their trial. Suspects in security-related cases who have not been charged with criminal offences, as well as some who have been formally indicted, may be held during the course of the criminal investigation or the trial in either Police or Prison Service facilities; if such persons are convicted and sentenced to imprisonment, however, they will serve their sentence in a Prison Service facility.

Supervision by public authorities

313. Detention conditions and treatment of detainees are subject to several overlapping systems of review and supervision by public authorities. In addition to the investigation and prosecution of disciplinary and criminal investigations against law enforcement officials described under article 7, and the procedures for filing detainees' internal complaints or petitions to the courts regarding any matter related to their detention as discussed further on under this article, there are four existing layers of institutions with auditing authority over the workings of the prisons and detention facilities. First, the Israel Police and the Prisons Service maintain internal audit departments, which are charged with ensuring compliance with standing orders in force. Second, the State Comptroller has general authority to audit the operation of any official entity. It has used this power to investigate detention practices, though not, thus far, in relation to physical conditions of detention. In addition, both the Prisons Service and the Israel Police have independent, high-ranking governmental auditors with broad powers. Under the Prisons Ordinance, the Attorney-General and Justices of the Supreme Court are granted full auditing powers ex officio with regard to any prison facility in the country; District and Magistrate's Court judges have auditing powers over prisons within the area of their jurisdiction. In addition, the Minister for Internal Security has used his authority to appoint literally dozens of official auditors to investigate the operations of particular prisons. These appointed auditors are generally lawyers at the State Attorney's Office or one of the District Attorney's offices; but they have also included an auditor on behalf of the Israel Bar Association, the members of the Council for Criminology in Israel, and lawyers from various government ministries. Finally, two Knesset Committees - the Constitution, Legislation and Law Committee and the Interior Committee - have assumed auditing powers over detention facilities to ensure compliance with legislative requirements and protection of the rights of detainees.

314. Official auditors may enter prisons over which they are appointed at any time, and may examine conditions of detention, the treatment of prisoners, the orderly operation of the prison and the degree of compliance with any legislative or other provisions. The auditor may speak with any prisoner privately, and prisoners may themselves request an interview with the auditor. Prison officials are obligated to provide the auditor with any information or document at his or her request; security-related files, however, may be released only to auditors who are Supreme Court Justices (Prisons Ordinance, sects. 71-72 F).

315. Independent official auditors are also appointed by the Minister of Internal Security regarding police detention lock-ups. These latter auditors are selected from among lawyers at the Ministry of Justice, and have powers similar to those granted to Prison Service auditors. See Attorney-General Directive No. 62.003.

316. Over the past several years, conditions of detention at police lock-ups have been subjected to thorough scrutiny by governmental authorities as well as NGOs. During 1994 and 1995, the Israel Police and the Ministry of Police (now the Ministry for Internal Security) carried out its own investigation of physical conditions at detention facilities, and cooperated with

investigations made by NGOs such as the Association for Civil Rights in Israel, and by the Israel Bar Association. Justices of the Supreme Court have made widely publicized visits to detention facilities, at which they have called for rebuilding or closing down particular facilities at which conditions were deemed inadequate. Many detention facilities have been found to be severely overcrowded, and to lack facilities and basic services necessary for maintaining reasonably satisfactory living conditions. Some detention cells lack toilets, and many cells have open toilets which are not separated from the rest of the cell; many cells have been found to lack adequate lighting and ventilation, clean mattresses and blankets; detainees are not generally given utensils for personal hygiene, such as soap, a toothbrush, toothpaste and towels. Detention lock-ups, unlike Prisons Service facilities, do not have social workers on staff, education and rehabilitation programmes or other social services. The inadequacy of facilities and services has especially serious consequences in view of the fact that a significant portion of the population at these lock-ups do not work, and may be detained for many months, or even over a year, until their criminal trial has been decided.

317. The Israel Police and other governmental authorities have taken concrete steps on several different fronts to improve conditions at detention facilities. In the aftermath of a series of investigative reports submitted by official and independent bodies in 1994 and 1995, as mentioned above, the Israel Police decided on a series of remedial actions, including massive reconstruction and refurbishing of physical facilities at detention facilities around the country. A $4.5 million refurbishment project has already begun at the Abu Kabir lock-up in the Tel-Aviv area, and similar programmes are planned for the Russian Compound lock-up in Jerusalem and the Kishon lock-up in Haifa.

318. These physical improvements have been accompanied by legislative reform, primarily the enactment of the Criminal Procedure (Enforcement Powers - Detention) Law, 5756-1996, and detailed implementing regulations, which stipulate minimum conditions of detention and detainees' rights. As discussed in respect of article 9, this new statute sets minimum standards for all persons in detention; prior to its enactment, such standards had been codified and applied only for persons in the custody of the Prisons Service. Moreover, under section of the new statute and regulation 2 of the implementing regulations, detainees are to be held only at a detention facility which meets all of the requirements of the law regarding infrastructure, services and detainees' rights. The Minister of Internal Security may rescind his approval of a particular detention facility at his discretion, if the conditions or the detainees' ability to enjoy the full range of their rights under the new law are sufficiently inadequate. If, instead, the Minister orders that certain shortcomings at a facility be repaired to comply with the provisions of the law, and they are not so repaired within a reasonable time, then the Minister must rescind his declaration that the facility is fit for operation (Criminal Procedure (Enforcement Powers - Arrest and Detention) (Conditions of Detention) Regulations, 5757-1997, regulation 2).

319. **Physical plant requirements**. Under the new law and regulations, each cell in a detention facility must have adequate lighting and a window affording adequate ventilation from the outdoors, or, if there is no such window, then reasonable alternate ventilation must be installed. Each cell

must have a sink and toilet, and the toilet must be physically separate from the living area of the cell to enable privacy, as must showers, if located in the cell. Any cells lacking a toilet or sink may be used only for very restricted purposes and for a limited time period, mainly to prevent attempts to destroy or conceal evidence in a criminal investigation, particularly in narcotics cases.

320. All cells built after the enactment of the implementing regulations (May 1997) must have a table, seats, and shelves for the detainees' personal use, must have no more than four beds, must afford an average area of not less than 4.5 m^2 for each detainee, sufficient electric capacity to accomodate heating and cooling appliances, television, and other appliances that detainees are entitled to use. Showers must be separated from the toilet. To the extent possible, all refurbishments of existing detention facilities should observe the above criteria as well (regulation 3).

321. **Hygiene and medical treatment**. The new regulations require that every cell be painted at least twice a year, disinfected and fumigated at least once annually or according to the instructions of the physician of the detention facility. The detention facility must provide detainees in every cell with adequate materials to clean the cell, which they are obliged to do (regulation 4). Each detainee will be given a bed, mattresses and clean blankets, and a reasonable quantity of personal hygiene materials, such as soap and toilet paper. Detainees are entitled to shower once a day on hot days, except if they are suspected of attempting to destroy or conceal evidence held on or inside their body, in which case, they may be prevented from showering for no more than three days (regulations 6-7). Persons whose detention has been extended by a judge for a period exceeding 24 hours, and who are unable to have someone bring them a change of clothes, sheets, a towel and basic means of personal hygiene, shall be given all of these by the detention facility. Detainees are also guaranteed medical treatment as required to maintain their health, and to suitable health supervision as ordered by a physician (Criminal Procedure (Enforcement Powers - Arrest) Law, sect. 9 (b) (1)).

322. **Food and exercise**. All detention facilities are obligated to provide detainees with three regular meals a day, of a type and quantity that will maintain the detainee's health. Detainees with special dietary requirements based on reasons of health may receive such food with the approval of the physician at the facility (regulation 8).

323. All detainees are entitled to a daily walk outdoors during daylight hours, if the conditions at the detention facility so allow; no person may be detained for more than seven days at a facility which cannot provide the opportunity for a daily constitutional outdoors, and must be transferred thereafter to a facility that can. However, the person responsible for investigation of a particular detainee who has not yet been indicted may, by a reasoned written decision, order the commander of a detention facility to restrict or deny the right to outdoor exercise if necessary to protect the integrity of the investigation. Detainees whose right to exercise has been restricted are still entitled to outdoor exercise, not necessarily during daylight hours, for one hour at least every seven days for a period of up to one month. A senior investigation official, having a rank of chief

superintendent or higher, may extend the period of restriction on exercise for additional 15-day periods if necessary to protect the criminal investigation (regulation 9).

324. In addition, the commander of a detention facility may restrict the right to outdoor exercise of a particular detainee to protect his or her own safety, in which case the detainee will be allowed outdoor exercise of at least one hour every five days (ibid.).

325. **Use of telephone**. Every detainee who has been indicted has the right to use the telephone once a day. Detainees who have not yet been formally charged cannot use the telephone unless the official in charge of the criminal investigation decides that such use will not impair a criminal investigation in progress (regulation 10); however, unindicted detainees may file a written request to the commander of the facility to have a telephone message sent to his or her attorney, except in the extreme cases in which the detainee's exercise of the right to meet with counsel has been delayed (regulation 10).

326. **Visitation rights**. A detainee who has been formally charged may receive visitors, in addition to legal counsel, once a week for 30 minutes, unless extended by the commander of the detention facility. Those who have not yet been indicted may not receive visitors unless the official in charge of the criminal investigation confirms that doing so will not impair the progress of the investigation, in which case he may place conditions on the manner of visitation to ensure the integrity of the investigation (regulation 12). Administrative detainees are entitled to receive visits from immediate family members every two weeks; more frequent visits, as well as visits by persons other than immediate family and legal counsel, may be granted at the discretion of the director of the prison. The total number of visitors in any particular visit is limited to three persons in addition to the detainee's spouse and children, unless the prison director permits otherwise. As discussed under article 7, visitation rights of administrative detainees may be restricted only for reasons of State security. If such visitation rights are withheld for more than two months, the detainee may appeal before the Minister of Defence. All restrictions on the visitation rights of administrative detainees must be reviewed at least once every two months, if not earlier at the request of the detainee (Emergency Powers (Detention)(Conditions of Confinement in Administrative Detention) Regulations, 5741-1981, regulation 11). As with all decisions affecting the detainee, restrictions on visitation rights may be appealed before the District Court, and thereafter to the Supreme Court if necessary.

327. **Correspondence**. Under the new law, indicted detainees may send and receive letters, and may receive writing implements upon request; in cases of financial need, the detainee may be exempt from paying postal charges (regulation 13). Detainees who have not yet been indicted may send letters if the official in charge of the criminal investigation confirms that doing so will not impair the investigation; if correspondence is allowed, the official in charge of the investigation may impose conditions intended to ensure that the integrity of the investigation, including review and censorship of the detainee's letters (ibid.). Administrative detainees have the right to receive mail, and may normally send four letters and four postcards per month, not including correspondence with legal counsel or with official authorities

(Regulation 14 of the Emergency Powers (Detention) (Conditions of Confinement in Administrative Detention) Regulations, 5741-1981), or more with the permission of the prison director. The right of administrative detainees to send and receive mail may be restricted by the prison director if he is convinced that doing so is necessary for reasons of State security; in such circumstances, the prison director does not have to notify the detainee that a letter written by or to him has not been forwarded, except in the case of letters to or from family members (ibid.).

328. **Furloughs**. Detainees who have not yet been convicted and sentenced are not granted furloughs except by court order, or by special permission in extenuating circumstances. While the right of convicted and sentenced prisoners to furloughs is not provided for in primary legislation, furloughs are granted according to the provisions of Prisons Commission standing orders which have the status of law (sect. 80 C (a) of the Prisons Ordinance). Such prisoners are categorized, within 30 days of their incarceration, into one of three groups for the purpose of determining their rights to furloughs: those who may not be granted furloughs except by permission of the Minister of Internal Security, either because their leaving the prison may pose a danger to public order and security, or due to an outstanding arrest warrant, or those who are detained by virtue of an extradition or deportation order; those who may be given furloughs according to conditions determined by the Israel Police; and those who may be granted furloughs with no such conditions. In general, prisoners have the right to furloughs after having completed one quarter of their sentence, or three years, whichever is earlier. Prisoners who are sentenced to life imprisonment may be granted furloughs after seven years, even if their sentence is not commuted to a specific period by the President of the State. The length of the furlough is between 36 and 96 hours, and the frequency varies between once every three months and once a week (from Friday afternoon to Sunday morning), depending on the type of offence which the prisoner committed, his behaviour record in the prison, the type of rehabilitation programme in which the prisoner is participating, and other considerations. The interval between furloughs may be shortened in order to enable the prisoner to observe religious holidays outside of prison, or for family or medical reasons. In addition, furloughs may be granted even though the prisoner has not completed the minimum portion of his sentence, or even if the interval between furloughs has not transpired, in special circumstances, such as births, marriages or deaths in the family, memorial services, vocational testing, preparation of a rehabilitation programme, or medical reasons.

329. Persons imprisoned in the context of civil proceedings may be granted furloughs of 48 hours after having completed one quarter of his or her term of imprisonment or three months, whichever is earlier, and additional furloughs of 48 hours once every three months thereafter. If the term of civil imprisonment is four months or less, then the prisoner may be granted a furlough after having completed half of his sentence.

330. **Conjugal visits**. Under standing orders now in force, conjugal visits are allowed for criminal prisoners who are not eligible for furloughs. Prisoners who have non-married spouses are accorded the same rights to conjugal visits as married prisoners. Recently, the Prisons Service has

broadened its conjugal visits policy, to enable such visitation during daytime hours, together with visits by the prisoner's children. A new facility dedicated to housing prisoners during their conjugal visits is being built at the Ayalon prison, and the Prisons Service has planned the construction of several more such facilities.

331. **Religious observance**. All detainees must be given the opportunity to observe the commandments of their religion, to the extent practicable. The participation of a particular detainee in group prayers may be restricted if the commander of the facility has reasonable grounds to believe that the detainee's presence will constitute a danger to the security or order of the detention facility, or to the detainee's own security (regulation 14).

332. **Security detainees**. The conditions of detention mentioned above apply to detainees suspected of security-related offences, with a few modifications (regulation 22), which allow restriction, for example, of the right to use the telephone and outdoor exercise. The use of other means of contact with the outside world (such as the use of a television or radio or receiving newspapers) may be restricted for security detainees who have not yet been indicted if the official in charge of the investigation believes that allowing such contact will harm the investigation (ibid.). The types of personal effects to which a security detainee is entitled, the special conditions for allowing or restricting their use to pre-indictment detainees, and the number or amount of such articles that may be held at any one time are stipulated in the new regulations.

333. The other principal policy initiative aimed at alleviating the stress on police detention lock-ups has been to examine the feasibility of transferring virtually all detainees and detention facilities to the Prisons Service. Although recent legislation requires detention facilities to meet the criteria discussed above, Prisons Service facilities are still better equipped to provide a full array of support services and facilities enabling reasonably dignified living conditions for detainees. Moreover, the Supreme Court has held that defendants remanded until the end of trial should be under the custody of the Prisons Service. Due to overcrowding, such defendants often remain in detention lock-ups for periods far longer than such facilities were intended to hold them.

334. The new policy of transferring responsibility for all detainees to the Prisons Service has been inaugurated in a trial programme at the Ohalei Keidar detention facility in the Negev region, under which suspects who have not yet been formally charged with an offence are being placed in the custody of the Prisons Service. The rights and conditions granted to detainees participating in the trial programme are thoroughly set out in joint standing orders of the Police and the Prisons Service. Among other things, a physician must confirm that the physical conditions in each detention cell will not harm the detainees' health; the cell must have sufficient lighting to enable reading without undue effort, must have sufficient ventilation approved by a physician, a sink and water faucet, a hot-water shower and toilet which afford privacy, an electrical outlet for use of appliances, a table or writing shelf and chair, and the detainee must be allowed to heat the cell subject to prison procedures. The cells must be painted and disinfected periodically, and the detainees must be given adequate means to maintain personal hygiene, including

a daily hot shower and shave. Detainees must have a bed, mattress and blankets for his or her own exclusive use. Blankets must be laundered or changed periodically. Those detainees who do not have a towel, washing or laundering utensils and cannot obtain them from persons outside the detention facility may receive such utensils for personal use during the period of detention. Detainees are allowed to maintain religious observance, and to receive a special diet on religious grounds. They are entitled to at least three nutritious meals per day at accepted mealtimes, with no more than 6 hours between meals and no more than 12 hours from the final evening meal until breakfast the next morning; special diets must be provided by the detention facility if necessary for reasons of health. Detainees may wear their own clothes, and must be given proper clothing if they cannot procure such clothes by themselves. They are entitled to a daily walk outdoors for at least one hour, to prompt and adequate medical care, and to dental care when necessary.

335. The conditions of detention for incarcerated convicts, and for those defendants remanded until the end of trial who are detained in Prisons Service facilities, are governed by the Prisons Ordinance and regulations thereunder, as well as the new Criminal Procedure (Enforcement Powers - Arrest) Law discussed in the preceding paragraphs. In addition to those conditions of detention previously described under articles 7, 8, 9 and this article, the following rights and conditions for convicted prisoners (and remanded defendants in Prisons Service custody) may be noted:

(a) The right to visits from clergy, and to an organized room for group prayer;

(b) Educational programmes, with special emphasis on promoting literacy, use of the prison library, and special arrangements to allow for advancing the education of individual prisoners during their spare time;

(c) Rehabilitation programmes, both inside and outside the prison;

(d) Detainees in security-related cases are treated differently in some respects than the ordinary criminal population. Some of their conditions of detention are more generous, for instance with respect to visitation rights, the right to outdoor exercise, and the right to receive special food; other conditions, such as with regard to furloughs and use of telephone, are more restrictive.

336. **Separation among detainee populations**. In Prisons Service incarceration facilities, separation is maintained between male and female detainees, between convicted prisoners and defendants or detainees who have not been convicted, between minors and adults, between persons detained in the context of civil proceedings and other detainees, between administrative detainees and other detainees, and, to the extent possible, between first-time and recidivist offenders. Under the new Arrest Law, all detention facilities must maintain a separation between detainees and convicted prisoners, and, to the extent possible, between persons who have not yet been indicted and those who have, as well as between first-time detainees and recidivists. In practice, Jewish and Arab prisoners or detainees may be separated from one another, to a greater or lesser extent, if necessary to maintain order within the prison.

337. Security-related suspects, defendants and convicts are held separately from the rest of the population at the facility, both for their own protection as well as to maintain order among the detainee population as a whole. To the extent possible, prisoners who are undergoing drug rehabilitation are separated from the general prison population.

338. The confinement of mentally ill persons in psychiatric hospitals is discussed under article 7. Convicted prisoners who are found to suffer from mental illness are held at the mental health facility at Ayalon prison, which is staffed by Health Ministry employees while remaining under the overall administrative responsibility of the Prisons Service. Police detention lock-ups do not have separate wings or facilities for mentally ill detainees. Rather, to the extent that the concern is raised at any stage of the criminal process that a person detained for any reason may suffer from a mental illness, then the court or the District Psychiatrist may order that the detainee be transferred to a mental hospital and held there for observation under conditions of detention, in order to determine whether the detainee needs treatment for a mental illness, or whether he or she is fit to stand trial, accordingly.

Complaint procedures

339. Detainees held in police lock-ups and in Prisons Service facilities may avail themselves of several, parallel complaint procedures regarding their conditions of detention or their treatment at the detention facility. In addition to those disciplinary and criminal procedures against law enforcement officials described under article 7, detainees may file complaints regarding the conditions of their detention as described below.

340. **Prisons Service**. Persons in the custody of the Prisons Service may file a complaint with the director of the prison at which they are held in respect of the conditions of detention. Such a complaint may be filed in writing or, at specified times, orally. Upon submission of any such complaint, the director of the prison must investigate the matter and give an answer to the detainee within seven days, or, in urgent cases, within three days. Should the detainee not receive a response within that period, or should the response be unsatisfactory - or should the complaint involve the director of the prison himself - then the detainee may apply to the Prisons Commissioner, and the prison director is bound to deliver such complaints to the Commissioner. The Commissioner must respond to such complaints within 14 days, or within 6 days in urgent cases. The deadlines for response to complaints may be extended if the matter in question requires an in-depth investigation, either by law or as a practical matter. The complainant must be notified of the reason for the delayed response in such cases. See generally Prisons Regulations, 1978, regulation 24 A.

341. The standing orders governing the trial programme at the Ohalei Keidar detention facility mentioned above, require a warden to circulate among the detainees in that programme once a day, and to register any complaints regarding the conditions of their detention. Detainees may also file written complaints directly with the officer-in-charge. In either case, under these standing orders, a response must be given within 48 hours, unless, as above, a more thorough investigation is required by law or in practice.

342. In addition to the internal complaint procedure described above, detainees at Prisons Service facilities are entitled to file petitions against governmental authorities or officials "in any matter related to his imprisonment or detention" directly to the District Court in the region where the prison is located. In practice, such petitions are often heard at the prison itself by a single District Court judge who comes periodically to the prison for that purpose. The volume of such complaints has grown dramatically following the institution of hearings at the prison. It is estimated that approximately 10,000 petitions are filed and adjudicated annually, on matters small and large. Decisions of the District Court may be appealed by leave to the Supreme Court. In addition, the Supreme Court, sitting as High Court of Justice, retains residual jurisdiction over such petitions in appropriate circumstances (Prisons Ordinance, sects. 62 A-62 D).

343. **Police lock-ups**. Under current law and practice, detainees in police lock-ups may file petitions with regard to any matter related to their detention to the District Court where the lock-up is located. In practice, most detainees in police lock-ups must be brought before a judge periodically in any case to determine whether to release them or to extend the detention during the criminal investigation, and during these detention hearings complaints regarding conditions of detention are commonly raised and adjudicated. See Police Standing Order No. 12.03.01, *Yalkut Pirsumim* 4230, 5754 (14 July 1994), p. 4228.

Publicity

344. A loose-leaf folder outlining the rights of detainees and minimum conditions of detention in Prisons Service facilities is available in the library of every prison facility. Under the new statute dealing with arrest and detention mentioned above, a description of detainees' principal rights and duties must be posted in a prominent place at each detention facility (Criminal Procedure (Enforcement Powers - Detention) Law, 1996, sect. 9 (d)).

345. During the preparation of this report, a copy of the United Nations Minimum Standard Rules for the Treatment of Prisoners, as well as the Code of Conduct for Law Enforcement Officials, was forwarded to the Legal Adviser of the Prisons Service at his request, so that the Prisons Service can review the Minimum Standard Rules and the degree to which Israeli law and practice is in actual compliance with them. From the discussion under this article, it would appear that the criteria in the Minimum Rules are guaranteed by Israeli legislation and standing orders of the authorities involved.

346. **Rehabilitation**. The preparation of convicted prisoners for a successful, law-abiding life after imprisonment has always been one of the overarching policy priorities of the Prisons Service, and of the criminal process in general. Provided that the individual prisoner is willing to participate in rehabilitation programmes, the Prisons Service encourages enrolment in a variety of programmes designed to give the prisoner improved employment skills, and to ease the social transition to life in the outside world. While a full description of the rehabilitation programmes and activities currently operating would far exceed the scope of the present report, the following activities may be noted:

(a) Drug rehabilitation;

(b) Separation of chosen groups of persons from the rest of the prison population, based on good behaviour and other indicators;

(c) Work outside the prison: prisoners who have completed part of their sentence with good behaviour may be allowed to work for pay at an appropriate job outside the prison and near their home community, or to begin a course of study, either with or without an escort. Such prisoners in a "work rehabilitation" programme are separated from the rest of the prison population.

(Prison Regulations, regulations 50-60)

Treatment of juvenile offenders

347. In addition to the discussion of juvenile offenders below, reference is made to special laws and practices for the protection of juveniles, including in cases involving violence within the family, under articles 23 and 24.

348. Israeli legislation provides for special handling of juveniles throughout the criminal process in a manner that is intended to minimize recidivism and to promote rehabilitation. The Israel Police and welfare authorities follow detailed, binding procedures that aim, among other things, to prevent as much as possible the public exposure of the minor's involvement in criminal activity, his or her arrest, investigation, trial or treatment; and to remove non-recidivists as quickly as possible from the cycle of criminal behaviour (Police Standing Order 14.01.05, sect. 2).

349. Children under 12 years of age may not be held responsible for a criminal offence by law. As a consequence, Israel Police standing orders forbid the arrest, opening of a criminal investigation file, or the taking of fingerprints or photographs of such children (Israel Police Standing Order 14.01.05, sect. 3 (b) (1)). The statute of limitations on any offence allegedly committed by a minor is one year, except if the Attorney-General allows prosecution after such period (Youth (Trial, Punishment and Modes of Treatment) Law, 5731-1971, sect. 14).

350. Criminal proceedings involving juvenile suspects take place in special juvenile courts, which must hold their proceedings in a location where other trials are not taking place, or, if the same facility is used, then the juvenile proceedings must be held at a different time of day (ibid., sect. 8 (a)). In practice, certain District and Magistrate's Court judges devote part of their time to juvenile cases, which are generally heard in the regular court buildings outside of normal court hours. Proceedings are generally held in closed-door session (Youth (Trial, Punishment and Modes of Treatment) Law, sect. 9), and, in appropriate circumstances, in the judge's chambers (Juvenile Offenders Regulations, 1938, regulation 4). Juveniles are to be physically separated from the adult detainee population in all phases of the process: in transport to and from court hearings, in the holding cells at the court, and in detention facilities. With respect to the last, relevant legislation requires that minors be detained only in a separate detention facility, or in a separate wing of a lock-up that allows for total

segregation, including prevention of all physical or eye contact, between the juvenile and adult detainee populations. The only current exception to this requirement applies in the case of detention at a police station for the purpose of investigation, in which case the juvenile must still be separated completely from adult suspects and detainees, albeit not necessarily in a separate wing or facility.

351. In practice, the severe overcrowding that has beleaguered Israel's detention lock-ups and prisons generally has had, in certain cases, the unfortunate result of making it virtually impossible to maintain total separation between the juvenile and adult populations. Furthermore, even in situations which allow for separation between juveniles and adults, the lack of space does not always enable separation among different types of juveniles needing special care or supervision. Two interrelated reforms are being undertaken to redress these inadequacies. The refurbishing programme mentioned above is intended, among other things, to bring physical conditions at detention facilities to the point where they enable actual compliance with the letter of the law. At the same time, a proposed amendment to the Youth (Trial, Punishment and Modes of Treatment) Law, prepared by the Ministries of Justice and Internal Security, requires dramatic broadening of the necessary separations between different juvenile detainees. Among other things, the proposed amendment requires that no juvenile be detained together with other juveniles during the first 24 hours of his or her detention; that no juvenile may be detained together with others if he or she is under 14 years old, or is suspected of having a mental or emotional disability, or whose safety may be at risk for any other reason; that a separation must be maintained between juvenile detainees more than two years apart in age; between minors suspected or previously convicted of sex-related or violent crimes from minors who have never been so suspected or convicted; between any two or more minors who, it is reasonably suspected, may become violent with one another; between first-time juvenile detainees and others; and between sexes. In light of the fact that these legislative changes will substantially raise the physical space requirements in every detention facility in the country, they are to enter into force no earlier than two years, and no later than five years, after their approval by the Knesset, without exempting authorities from compliance with the new provisions where physical conditions at the detention facility so allow.

352. **Other special procedures regarding arrest and detention**. Among the practices employed with respect to minor suspects, one may note the following (see generally Police Standing Order 14.01.05):

(a) Generally, minors are to be brought to the police station for investigation by their parent or guardian, who must be present during the investigation if the minor is under 14 years of age;

(b) Investigations of minors must generally be done during the day, but not at their school, workplace or other place in which they might congregate with other minors;

(c) The police must notify the Youth Parole Office immediately of the arrest or investigation of a minor, must work together with the Youth Welfare officer throughout the handling of the case, and must keep the Youth Welfare officer abreast of all significant developments;

(d) With certain exceptions, the investigation of a minor is carried out by a specially-trained police youth officer;

(e) Police investigations officers have discretion to refrain from photographing minor suspects who are not known offenders, and to remove any photographs of the minor from official files in the event that the investigation file is closed without indictment; if the file is closed due to "absence of guilt", then such photographs must be removed from police records;

(f) Arrest and transport of minor suspects must be done in a manner that avoids, as much as possible, arousing the attention of passers-by. The police youth officer who carries out the arrest or transports the minor must be dressed in civilian clothing and use an automobile without police markings or licence plates;

(g) Minors are not to be handcuffed except in extraordinary circumstances, such as if the minor is known to be violent, has attempted to abscond from lawful custody in the past, or if there are reasonable grounds to believe that the minor will tamper with evidence. Minors under 16 years of age may not be placed in leg-irons, and if over 16 may have leg restraints only if the police officer in charge deems that there is no other way of safely transporting the minor;

(h) No information may be published, at any stage of the criminal process, which might lead to the identification of the minor, including the fact that the minor or his or her family are involved in criminal or immoral behaviour, that a court or welfare officer is involved in the minor's affairs, that the minor has attempted or committed suicide, or any information connecting the minor to examinations or treatment having to do with psychiatric illness or with AIDS.

353. The general statutory limits on the length of detention of juveniles are discussed under article 9 above.

354. **Closing of criminal files before indictment or trial**. In practice, many criminal cases involving juveniles do not reach trial. The juvenile parole officer often gets involved early on during criminal investigations of minors, to examine the possibility of treatment programmes that may avoid the necessity of a criminal trial. In the great majority of criminal investigations against juveniles the file is closed without indictment, typically with the involvement of the parole officer. In certain types of offences, a practice has developed of "not opening" an investigation, with or without dispensations for treatment and follow-up. During 1996, for example, out of 15,881 cases referred to the Youth Parole Office after criminal suspicions were raised against juveniles, 8,522 cases were closed without having a formal criminal investigation file opened, while such files were

opened in the remaining 7,359 cases. During that same year, an additional 1,841 criminal files against juveniles were closed without having a charge sheet filed, while 3,192 cases went to trial.

355. **Sentencing**. In the event that a court finds that a juvenile has in fact committed a criminal offence, it may determine, at its discretion, whether to convict and sentence the minor, to exempt him from liability outright, or to order him to undergo one or more modes of treatment aimed at rehabilitation (without conviction), as described in the next paragraph. No minor under the age of 14 years at the time of sentencing may be imprisoned. Judges, moreover, are mandated to take the offender's age at the time of commission of the offence into account in sentencing. As an alternative to prison, the court may order that a convicted juvenile be held in a closed juvenile home, which must provide for the juvenile's education, health care, psychological care, social activity, entertainment, and so on (Youth (Trial, Punishment and Modes of Treatment) (Conditions for Holding Minors in a Home) Regulations, 5736-1976, regulation 7).

356. **Treatment**. Instead of traditional criminal punishments, the court, after having determined that a juvenile has indeed committed a criminal offence, and after reviewing the mandatory pre-sentencing report of a probation officer, may order juvenile offenders to undergo one of the following alternative methods of rehabilitative treatment:

(a) Placing the juvenile under the supervision and care of an appropriate person other than his or her parent, and to limit the parents' guardianship rights accordingly during a specified period;

(b) Sufficing with probation;

(c) Releasing the minor subject to the offender's or his parent's written obligation, with or without a money guarantee, of good behaviour;

(d) Placing the juvenile in a daytime juvenile home programme;

(e) Placing the offender in an open or closed juvenile home for a specified period;

(f) Paying a fine by the juvenile offender or his parent;

(g) Compensation of the victim's damages.

(Youth (Trial, Punishment and Modes of Treatment) Law, sect. 26.) Under the proposed amendment to the Law, juvenile offenders may also be ordered to perform "public service works", such as working at a hospital or other welfare institution.

357. During 1996, of 1,150 criminal trials decided, 534 resulted in a supervision order, 112 in placement in a juvenile home, 63 in a treatment programme for the minor without any judicial order, and 447 in the other forms of treatment or sanctions; 153 minors were sentenced to terms of imprisonment.

358. The Criminal Register and Rehabilitation Law, 5741-1981, place firm restrictions on the disclosure of a juvenile's criminal record.

359. Another important facet of the rehabilitative treatment of juvenile offenders is mandatory follow-up treatment for offenders who have been placed in juvenile homes. Such follow-up typically lasts for one year from the date of release from the home, and is supervised by a "follow-up officer" under the aegis of the Labour and Social Affairs Ministry, who has authority to make decisions regarding the juvenile's residence, studies, employment and activities during his spare time (Youth (Trial, Punishment and Modes of Treatment) Law, sects. 38-39). Such follow-up treatment may be cancelled if deemed unnecessary by the court.

Article 11 - Freedom from imprisonment for breach of contractual obligation

360. The Execution Law, 5727-1967, which deals with the execution of civil judgements, allows for imprisonment of judgement debtors, including debtors in respect of contractual obligations, in certain defined circumstances for refusal to pay a judgement debt. A recent landmark Supreme Court judgement in 1993 substantially narrowed the use of imprisonment against judgement debtors, and led to a far-reaching amendment of the Execution Law in 1994, as described below.

361. Before the 1994 amendment of the Execution Law, section 70(A) provided that a judgement debtor could be imprisoned by order of the Chief Execution Officer, who sits in a judicial capacity, for a period of up to 21 days if two conditions were fulfilled: that the debtor has means to pay the judgement amount, and that "there is no other way" to force him to pay the debt. In practice, creditors often found that having an imprisonment order issued against the recalcitrant debtor was the surest way of ensuring payment of the judgement debt. As a result, orders of imprisonment came to be used with great frequency, often without undertaking any thorough formal investigation before the Chief Execution Officer regarding the debtor's ability to pay. In H.C.J. 5304/92, *Perah Association v. Minister of Justice et al.*, 47(4) P.D. 715, the Supreme Court declared invalid a regulation under which an order of imprisonment may be issued if up until the date of the order *the debtor* did not show that execution of judgement was possible by other means. The Court held that imprisoning a debtor without first undertaking a full-fledged investigation which shows that the debtor can indeed pay the debt but refuses to do so, is inconsistent with the fundamental rights to liberty and dignity under sections 1 and 6 of Basic Law: Human Dignity, as it is tantamount to punishment for non-payment, rather than a means of ensuring execution of judgement. The Court further held that a judgement debtor who truly has no means to pay the debt may not be imprisoned.

362. Amendment No. 15 of the Execution Law (S.Ch. 1479 (5754), p. 284) introduced a new regime regarding investigation of a debtor's means and, on the whole, severely narrowed the availability of imprisonment orders, in accordance with the *Perah* judgement mentioned above. Under the amended section 70 of the Execution Law, a mere inability to discharge a debt is not a sufficient ground for imprisonment. An order of imprisonment may be issued against a judgement debtor only when the Execution Office holds the debtor in

contempt because he has the means to pay the judgement debt but avoids doing so. Prior to issuing an imprisonment order, the Chief Execution Officer must hold a hearing in the presence of the debtor, in which the debtor is examined regarding all assets on the basis of an affidavit filed previously. If the debtor patently refuses to comply with the execution proceedings, for example by refusing to file an affidavit regarding his assets, then the Chief Execution Officer may order his imprisonment. During the investigation of the debtor's assets, the Chief Execution Officer may order the debtor to pay monthly instalments based on his ability to pay, or, if the debtor requests a long-term schedule and waives secrecy of his financial records, the Officer may declare that the debtor is "limited in means". Once this status is conferred on the debtor, his name is entered into a special register at the Execution Office, and he may be restricted from using credit cards or from serving as a manager or director of a limited liability company.

363. Following the investigation of means, the debtor may be imprisoned for contempt for a period of up to seven days in any of the following circumstances:

(a) He does not bring full and accurate information regarding his ability to pay the judgement debt;

(b) He has been shown to have the ability to pay the judgement debt, but does not comply with the order of payment by instalments;

(c) He does not comply with other decisions given by the Chief Execution Officer during the hearing regarding the ability to pay;

(d) He has actively concealed his assets.

In each of these instances, the Chief Execution Officer must consider the efficacy of alternative measures, such as attachment of the debtor's assets, before issuing an imprisonment order. If two years have passed since the last appearance of the debtor before the Chief Execution Officer, then he may not be imprisoned unless another hearing is held.

364. An order of imprisonment may not be issued against a minor or an incompetent person, or against a soldier in active service; nor may it be issued against a spouse, descendant or parent of the judgement creditor (except for execution of judgements awarding maintenance or alimony), or if the debt is for an amount less than 50 shekels (sect. 71 of the Execution Law). Debtors who do not pay court-ordered alimony or maintenance instalments to their spouse, parent, or minor or disabled child currently may be imprisoned for up to 21 days without a full-fledged investigation as to means, provided that a written warning has been sent to the maintenance debtor; the grounds and procedural safeguards relating to imprisonment of debtors in general do not apply, under current law, to maintenance debtors. It should be noted that in such cases a previous investigation will have been undertaken by the court as a basis for the award of alimony or maintenance. In any case, the maintenance debtor must still be brought before the Chief Execution Officer within 48 hours of arrest, and the Officer may annul the imprisonment

order or shorten the period of imprisonment, with or without imposing payment or other conditions on the debtor, and may take any other decision which he or she deems appropriate.

365. Imprisoned debtors generally have the right to have their case reviewed within three days. They must be released before the end of the period stated in the order if they pay the debt or instalment for which they were imprisoned, or provide satisfactory security for payment, or show other cause why they should be released. Before the imprisonment order is executed, the debtors may of their own initiative make payment or offer security, or may apply to the Chief Execution Officer to give another reason why they should not be imprisoned, such as that they have been declared bankrupt in the interim.

366. One result of the amendment to the Execution Law, discussed above, is a sharp decline in payments by recalcitrant debtors. New legislation is currently being considered, which will promote collection of debts while ensuring that debtors are not imprisoned for the inability to pay them, but rather only in cases in which the debtor has the ability to pay but refuses to do so.

Article 12 - Freedom of movement

367. **The legal landscape**. Until 1992, the right to enter and exit Israel, as well as the right to freedom of movement within the State, were articulated and developed mainly through judicial decisions which interpreted legislation dealing with these matters. The Israel Supreme Court has held that "freedom of movement ... is a natural right, recognized ... in every State with a democratic form of government - of which our country is one - and the citizen does not need any special qualifications to be entitled this 'grant'". H.C.J. 111/53, *Kaufman v. Minister of Interior et al.*, 7 P.D. 534. Any governmental action affecting travel is subject to review by the Supreme Court, which must be convinced by clear, unequivocal evidence that there exists a "genuine, serious concern" that national security or other equally crucial interests will be "substantially damaged" if the person's right to travel is not restricted. H.C.J. 448/85, *Dahar et al. v. Minister of Interior*, 40(2) P.D. 701.

368. With the enactment of section 6 of Basic Law: Human Dignity and Liberty in 1992, the rights to leave and to enter Israel were given a firmer constitutional grounding. Section 6 provides:

(a) All persons are free to leave Israel;

(b) Every Israel national has the right of entry into Israel from abroad.

These rights are subject to the limitation clause (sect. 8) of the Basic Law, which prohibits any impairment of the right except by a statute which befits the values of the State and is intended for a proper purpose - and then only to the extent required; or pursuant to such a statute which explicitly authorizes impairment of the right. In addition, section 12 of the Basic Law stipulates that emergency regulations properly in force may deny or restrict

these rights only for a proper purpose, and for a period and to an extent that does not exceed what is necessary. The Basic Law is binding on all official authorities.

369. Legislation predating 1992 which deals with entry into or exit from Israel remains in force, but is now interpreted according to the principles in the Basic Law.

370. **Freedom of movement within the State**. For all persons who are lawfully within the territory of the State of Israel, there is no requirement of registration in particular districts, and movement within the State is generally unrestricted. All residents of Israel (i.e. citizens, permanent residents who are not citizens and temporary residents) are required to register their address, or any change thereof, at the Population Registry. Aliens need not register their whereabouts while in the country.

371. The Mandatory Defence (Emergency) Regulations, 1945, grant military commanders or ministers broad powers to limit freedom of movement by a variety of means for the purpose of ensuring public safety, national security, public order, or for quelling of riots and insurgencies (see Palestine Order in Council (Defence), 1937, section 6 (1), which authorized promulgation of the 1945 Regulations). Such measures include curfews (regulation 124), declaration of closed military zones (regulation 125), orders prohibiting an individual from entering specified places or areas or requiring a person to notify the authorities of his whereabouts (regulation 109), orders placing a person under police supervision and restricting a person's place of residence or movement outside of a specified place or area (regulation 110). The above measures are employed very sparingly within the State of Israel. In 1994, for example, one order placing an individual under police supervision was issued by the Military Commander for the Home Front; in December 1995, following the assassination of Prime Minister Yitzhak Rabin, eight such orders limiting the freedom of movement of individuals were issued, four of which were extended in June 1996; in April and June 1996, a total of eight additional orders of restriction were issued against individuals. All of the above orders were issued against persons active in Jewish extremist groups. Some of the orders restricted the person's movement outside of a specified area, while others restricted their access to a particular place, such as the Temple Mount in Jerusalem.

372. In each of the above instances, the military commander, pursuant to guidelines issued by the Attorney-General, conducted prior consultations with the Attorney-General's representatives before issuing the orders restricting individual freedom of movement. Initially, a temporary order expiring after 14 days was issued, during which period the persons subject to the orders were granted an appeal hearing before a representative of the military commander. Such a hearing is granted in every case of an order restricting freedom of movement under the Defence (Emergency) Regulations. The military officer presiding over the appeal must have legal training, hold a rank of lieutenant-colonel or colonel, and must not serve as the commander's permanent legal adviser. As a result of this appeal procedure, the duration of two of the orders mentioned above was reduced from six to three months.

373. All orders restricting freedom of movement issued under these emergency regulations are appealable to the High Court of Justice, which will apply the standard of review mentioned above.

374. Movement of persons within Israel may also be restricted in the context of criminal proceedings under the Criminal Procedure Law, 5734-1974 or the Criminal Procedure (Enforcement Powers - Arrest) Law, 5756-1996. When a person is released from detention for the duration of a criminal investigation or trial, the court has authority to make the release conditional on limitations of the person's movement if necessary to protect public order or safety, to ensure the person's appearance at trial or at subsequent investigations, or to ensure that the criminal investigation is not undermined. Such restrictions on movement on released detainees may include house arrest, house arrest qualified with limited movement within a specified area during specific hours, or orders prohibiting entry to a specific place or area. The latter type of order may also be issued in the context of a civil court proceedings in domestic disputes, or in proceedings under the Protection of Privacy Law, as discussed under article 17.

375. **Exit from Israel**. All persons leaving the State of Israel must present a valid passport, laissez-passer or other travel document. Citizens with valid passports generally may leave the country freely, provided that if they still have an obligation to perform military reserve service, then they receive approval from the Israel Defence Forces; such approval is routinely granted unless the person has received a call-up order for reserve duty which is scheduled during the period of his absence from the country and has not secure a postponement of the order.

Restrictions on the right to leave Israel

376. No person may leave Israel directly for any of the countries specified in the Prevention of Infiltration (Offences and Punishment) Law, 5714-1954 (the current list includes Lebanon, the Syrian Arab Republic, Yemen, Saudi Arabia and Iraq) without a permit from the Minister of Interior. Israeli nationals are likewise forbidden from entering the above countries without a similar permit.

377. Under section 6 of the Emergency (Departure Abroad) Regulations, initially enacted in 1948 and still in force, the Minister of Interior may forbid the exit of a person from Israel, if there is a basis to suspect that his or her exit is likely to harm national security. As noted above, in exercising authority under this provision, the Minister of Interior has an obligation to balance national security concerns against the basic right to freedom of movement, by finding clear evidence of a genuine, serious fear that national security would be "substantially damaged" if the person is allowed to leave the country (*Dahar v. Minister of Interior*, supra (petitioner denied exit permit to Romania based on evidence that purpose of petitioner's travel was, inter alia, to contact representatives of hostile organizations and bring funds into Israel for hostile purposes)). It may be noted that this decision was rendered before the enactment of Basic Law: Human Dignity and Liberty.

378. The right to leave Israel may be restricted in the context of civil court proceedings. The court, or the Chief Execution Officer, may issue an

order preventing departure abroad of a defendant or judgement debtor for a period of one year if there are genuine, substantial grounds to believe that the latter is about to leave the country and thereby frustrate the judicial proceeding or the payment of the judgement (sect. 361 of the Civil Procedure Regulations, 5744-1984; section 14 of the Execution Law, 5727-1967). In such circumstances, the defendant or judgement debtor may also be required to deposit his or her passport or travel document with the court. Such orders are issued not infrequently in the case of spouses who fail to fulfil alimony or child support arrangements. However, the courts will allow the person to leave the country if there are adequate alternative means to ensure his appearance at trial or payment of judgement, such as depositing a sum of money or bank guarantee with the court. Persons who are not Israeli nationals are very rarely prevented from leaving the country in these circumstances (M.C.A. 7208/93, *Weisglass v. Weisglass*, 48(4) P.D. 529).

379. The right to leave Israel may also be restricted for persons in the context of criminal proceedings, in order to guarantee appearance at trial, to prevent undermining of an investigation, to protect public order, or as a condition of probation.

Travel documents

380. Passports and travel documents are generally issued as a matter of course. Under section 6 of the Passports Law, the Minister of Interior has authority to refuse to grant or to extend the validity of a passport or laissez-passer, to attach conditions to the grant or extension of validity of a passport or laissez-passer, to cancel them, or to limit the range of countries for which they are to be valid. In exceptional circumstances, the Minister or his representative may cancel or refuse to issue a passport or travel document, or limit its validity solely to return to Israel from abroad. Examples of such exceptional cases include a person who has violated a court order prohibiting his or her exit, or that of a minor, from Israel; a person who was naturalized based on fraudulent representations, and whose nationality was subsequently revoked; or a person whose departure abroad, in the opinion of the Director-General of the Ministry of Defence, is likely to harm national security.

381. In many cases in which a passport is refused, the applicant is granted a laissez-passer, which will enable the person to depart from Israel but does not confer the right to a tourist visa in the countries with which Israel has bilateral entry agreements. A laissez-passer document may be given to Israeli citizens, at their request, in special circumstances, or to persons whose nationality is undefined or doubtful (Passports Law, 5712-1952, sect. 2 (b)). In general, a laissez-passer is not issued to a foreign national if that person's State has an official representative in Israel. Until recently, many laissez-passer documents were issued to foreign nationals, due to the lack of such official representation in Israel. Over the last several years, however, the frequency of such occurrences has drastically decreased, as most other countries now have official representatives, consular or otherwise, in the country. Arab residents of Jerusalem, many of whom are Jordanian citizens, nevertheless receive laissez-passer documents routinely.

382. Israel does not place any general restrictions, by law or policy, on the validity of passports for countries where armed hostilities are in progress, or where there is danger to the public health or physical safety of Israeli nationals, beyond the five countries noted above in the Prevention of Infiltration (Offences and Punishment) Law, 5714-1954.

383. **Appeal procedures**. When a passport has been denied, revoked or restricted, the person affected receives notice in writing. In all of the above instances, the decision of the representative of the Interior Ministry may be appealed directly to the Minister, and if the result is unfavourable, to the High Court of Justice. The appeal procedure before the Minister of Interior is informal, usually in writing, though the person affected or his or her attorney may be granted a hearing with the Minister's representative upon request. There are no formal provisions for bringing evidence, or the right to confront and cross-examine witnesses.

384. **Entry into Israel**. Any person who is neither an Israeli national or the holder of an *oleh*'s certificate under the Law of Return, 5710-1950, must enter Israel by visa and permit of sojourn. For such persons, there are four general categories of visas and permits of residence under Israeli law: a permit of transitory sojourn (up to five days); a visitor's permit (up to three months); a permit of temporary residence (up to three years); and a permit of permanent residence (Entry into Israel Law, 5712-1952, sect. 2). Each of these permits may be renewed for periods prescribed by law.

385. **Visitor's permits**. Israel is party to bilateral agreements with some 70 other countries, in accordance with rules developed by the International Civil Aviation Organization, under which nationals of those countries automatically receive a three-month tourist visitor's permit, so long as they do not seek to work in Israel. Visitor's permits are issued in accordance with the purpose of the person's stay in Israel - for employment, for tourism, or as a volunteer. If the purpose of the person's visit to Israel is not clear, a visitor's permit will be issued for a period of up to one month, during which the person must apply to the appropriate authorities to clarify his or her status (Entry into Israel Regulations, 5734-1974, Regulation 5). Persons from countries with which Israel does not have such a bilateral entry agreement must secure a visitor's permit prior to arriving in Israel or at the border entry station, depending on the country in question.

386. **Permits of temporary residence**. There are four types of temporary resident permits which may be granted to aliens. If the applicant wishes to study at an educational or training institution in Israel, he or she must present confirmation from that institution showing that he has been accepted as a student, or other evidence proving that the person in fact intends to pursue a course of study in Israel; he or she must also show financial capacity for supporting oneself during the stay in Israel, and must have a valid travel document.

387. Temporary residence is also granted to clergy and other persons serving at religious institutions in Israel, including at hospitals and other welfare institutions operated by organized religious denominations. In practice, such temporary resident permits are renewed without any overall time limit so long as the applicant continues to serve at the religious institution. The policy

of the State of Israel has been not to grant such religious personnel permanent residency status, to avoid possible claims of discrimination against any particular religious denomination. However, permanent residency is commonly granted to persons who have served at a religious institution in Israel for a long period, and wish to remain in Israel thereafter.

388. Persons who hold *oleh* visas under the Law of Return, and who wish to reside in Israel for a period of up to three years to consider the possibility of remaining as citizens, may be issued a temporary resident permit for that purpose. Finally, a temporary residence permit may be issued to an applicant who intends to come to Israel for a reason other than those mentioned above.

389. Permanent resident status is granted at the discretion of the Interior Minister. *Olim* who decline citizenship are permanent residents, as are residents of the Golan Heights and East Jerusalem who do not apply for citizenship. Permanent resident status may also be granted in cases of family reunification and on other humanitarian grounds. Although the Minister has no statutory obligation to give reasons for his decisions on such applications, the practice has been to give reasons to the extent possible. The criteria applied by the Interior Ministry in applications for permanent residency focus on the capacity to show that one's life, or that of one's immediate family, is centred, as a practical matter, in Israel. If a permanent resident leaves Israel for a period of at least seven years, or has become a permanent resident or citizen of another country, then his permanent residency status in Israel is deemed to have expired.

390. **Diplomatic personnel**. Foreign nationals who enter Israel with a diplomatic or service passport are exempt from the need to have a valid entry permit, provided their country has signed an exemption agreement with Israel. The Interior Minister may also exempt particular persons or groups from this obligation, if he deems it justified. The Ministry of Foreign Affairs, as a practical matter, gives entry permits to diplomatic personnel serving in Israel.

391. **Discretion of Interior Ministry**. The Interior Minister has broad discretion in granting, refusing, revoking or extending residency permits. The applicant may be required to provide information and evidence as part of the process. By law, the Minister is obligated to show reasons for his decision only with regard to cancellation of a visa and entry permit held by a person who is lawfully in the State. In practice, especially since the enactment of Basic Law: Human Dignity and Liberty, reasons for decisions regarding visas and residency permits are noted in the applicant's file, and are generally shown to him or her upon request, unless special security considerations justify not disclosing the evidence on which the decision is based. All persons adversely affected by decisions regarding cancellation of visas or residency permits may appeal to the Interior Minister and, if necessary, to the High Court of Justice.

392. In accordance with section 6 of Basic Law: Human Dignity and Liberty, no Israeli national can be deprived of the right to return to Israel.

Article 13 - Expulsion of aliens

393. Aliens who have entered and are inside Israel, lawfully or unlawfully, may be expelled only pursuant to deportation proceedings, as described below. Aliens who are denied entry at frontier stations may be removed from the country without full-fledged deportation proceedings, though their removal must be formally decided upon by the Minister of Interior or his representative (Entry into Israel Law, 5712-1952, sect. 10). A person who enters Israel other than through a frontier station may be deported either through regular deportation proceedings at the Ministry of Interior or, if applicable, by the Minister of Defence under the Prevention of Infiltration Law, 5708-1948. Persons whose Israeli citizenship has been revoked may also be subject to deportation, subject to various procedural safeguards.

394. **Removal of aliens who are not permitted to enter Israel**. When a person comes to Israel and wishes to enter it, a frontier control officer may delay his entry until it has been ascertained whether he is permitted to enter, and he may indicate a place where such a person shall stay until completion of the examination or until his departure from Israel (Entry into Israel Law, 5712-1952, sect. 9). In practice, the person is detained at the border police facility at the point of entry, but the Entry into Israel Law also provides for detention at another police station, a prison, a quarantine or disinfection facility of the Ministry of Health, the vehicle on which he or she arrived at the border, or any other place deemed appropriate by the frontier control officer (Entry into Israel Regulations, 5734-1974, regulation 18).

395. **Persons subject to deportation**. An alien who is in Israel without a valid permit of sojourn or residence is subject to deportation (Entry into Israel Law, sect. 13). In many such instances, the alien's permit of sojourn has expired and has not been renewed; in other cases, the Ministry of Interior cancels or shortens permits of sojourn or residence, on several possible grounds. A 1985 amendment to the Administrative Procedure Amendment (Statement of Reasons) Law, 5719-1958, requires that the Minister of Interior give reasons for any decision cancelling a permit of residence. The grounds for such cancellations are not stipulated by law; nevertheless, the Minister's decision must be based on proper, relevant reasons. Though no official statistics are currently available regarding the total number of cancellations, or a breakdown according to the reasons therefor, it may be said that in the vast majority of cases residency permits have been cancelled because the bearer has violated the conditions of his or her permit (for instance, by working in Israel despite having only a tourist visa), or has provided false information as a basis for receiving the permit. Other grounds for cancellation or curtailment include evidence that the person poses a risk to national security, public health or public order. Once a permit has been cancelled, and the person does not leave Israel voluntarily, then he or she is subject to deportation. The same is true for a person who has been recognized as an *oleh* under the Law of Return on the basis of fraudulent representations.

396. **Deportation procedures**. Only the Minister of Interior, or one of several senior Ministry officials, may issue a deportation order. The order must be transmitted in writing. Once it is properly issued, a frontier control officer or police officer may arrest the person subject to deportation

and detain him in the place and manner prescribed by the Interior Minister, until his voluntary departure or deportation from Israel. Such detention is not automatic; in practice, it is used in those instances when it is deemed necessary to enable the carrying out of the deportation order. Although the relevant regulations provide that detention may be in a police station, a prison, a quarantine or disinfection facility of the Ministry of Health, or another place which the Minister deems appropriate, the Minister must consider less restrictive alternatives, such as house arrest, posting of bond, regular reporting to the police, and so on. *Al-Taye et al. v. Minister of Interior et al.*, H.C.J. 4702/94, 5190/94, 5448/94 (not yet published).

397. The deportation order may not be executed for at least three days from the date of notification (Entry into Israel Regulations, regulation 21), to enable the person subject to deportation or his or her attorney to appeal directly to the Minister of the Interior. As with appeals of cancellation of residency permits, the appeal of a deportation order does not involve a formal administrative or quasi-judicial hearing. The appellant's claims and evidence are submitted in writing, and the execution of the deportation order will be postponed at least until the appeal is considered and decided. In certain cases, the appellant or his or her counsel may hold an informal hearing with the Director of the Population Administration at the Interior Ministry or a representative of the Ministry's Legal Department. The evidentiary basis for the deportation order may be shown to the appellant, unless doing so would cause harm to national security.

398. **Appeal of deportation orders to the Supreme Court**. If, as a result of the appeal to the Minister, the deportation order is not cancelled and the appellant does not agree to leave the country voluntarily, then he or she may file a petition to the High Court of Justice against the order. The petitioner may challenge not only the legality of ordering his or her deportation per se, but also the need for detention prior to deportation, the degree of restrictiveness of the conditions of detention and, in certain circumstances, the country to which he or she is to be deported. In accordance with article 33 of the Convention relating to the Status of Refugees, 1951, to which Israel is a party, no one may be deported to a country in which his life or liberty may be endangered. In the *Taye* case mentioned above, the High Court considered the deportation orders issued against 24 Iraqi citizens who had crossed the border illegally and were being detained in prison, some for periods exceeding two years, due to their refusal to return to Iraq, as they claimed that their lives would be endangered for political reasons if they returned. Moreover, attempts to find another country that would accept the deportees had proved fruitless. Although the Court held that the authorities were clearly empowered to deport the petitioners, it reiterated the acceptance of the principle of non-refoulement, interpreting it to entail not only that the Minister of Interior could not deport them to a country where their lives or liberty might be endangered, but also to any other country that could not guarantee that the petitioners would not be returned to Iraq. Regarding the prolonged detention of the petitioners, the Court further held that, if a deportation order is not executed within a reasonably prompt period of time, then continued detention must be justified by showing that there is a basis to believe that the detainee may flee to escape deportation, that if released he may harm public order or national security, or other similar grounds; otherwise, the

authorities had to consider release under suitable conditions as an alternative to detention for those petitioners against whom there was no clear evidence that releasing them might impair national security. In fact, roughly 20 of these Iraqis were released from detention in late 1995, and many of them are still in Israel as of the submission of this report.

399. In the first stage of the petition to the High Court, an order to show cause (order *nisi*) may be issued, requiring the Minister of Interior or other authorities to show why the order should not be cancelled, its execution postponed until a different country of destination is found, or the conditions of detention changed. Usually the Court will issue a stay of execution of the deportation order together with the order to show cause. Prior to execution of the deportation order, the Minister must consider any new circumstances which might justify cancellation of the order.

400. Official statistics on the number of deportation orders issued and executed against persons in Israel, divided according to the reason for deportation, are currently available for 1993-1995, as follows:

Table 11. Deportations, 1994-1996

Reason for deportation	Number of deportation orders issued		
	1994	1995	1996
Lack of valid permit of residence or work permit	571	712	1 787
Security-related	18	6	17
Criminal activity or conviction	56	78	120
Infiltration of border	54	79	52
Other	46	40	18
Total issued	**745**	**915**	**1 992**
Total executed	**386**	**581**	**1 421**

During the above years, the deportees came from more than 70 different countries.

401. According to the practice followed by the Ministry of Interior, when the citizenship of an Israeli national or the *oleh* permit of an *oleh* under the Law of Return is revoked due to fraudulent representations, the person is not formally deported, but rather is generally provided with a laissez-passer used for aliens and told that he should leave the country. In case the person encounters difficulties in finding another country that will receive him, the

Ministry of Interior follows a policy of taking certain temporary measures that may help the person secure such an entry visa and enable him or her to subsist in Israel until the date of departure.

402. Under section 11 (a) of the Nationality Law, 5712-1952, an Israeli national who leaves Israel illegally for one of the States mentioned in the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, is deemed to have renounced his Israeli nationality, which is deemed to have terminated as of the date of his leaving Israel. In the past, persons who came under this provision were subject to deportation upon return to Israel. In the last five or six years, however, this provision has not been applied, and in several instances persons whose citizenship had previously been terminated for this reason succeeded in having their citizenship restored to them. Thus, the deportation of former Israel nationals on these grounds no longer arises as a practical matter.

403. Persons who are deported from Israel under the Entry into Israel Law may be required to pay the expenses incurred from the time of their detention to the execution of the deportation order. If they are foreign workers illegally in the country, then their employers may be required to pay.

Article 14 - Right to fair trial; judicial independence

Organization of the judiciary

404. The structure and operation of Israel's system of courts of general jurisdiction are discussed in the Introduction to this report. The discussion under this article, therefore, should be read in conjunction with the relevant portions of the Introduction.

405. Israel has several court systems which, for the most part, have independent areas of original jurisdiction. The general court system, which deals with both civil and criminal matters, has three instances: Magistrates' Courts, District Courts and the Supreme Court (Basic Law: Adjudication, sect. 1 (a)). The Supreme Court sits in Jerusalem and currently has 14 judges. Its substantive jurisdiction lies in two main areas: as a court of appeal in civil and criminal matters from District Courts, and as the High Court of Justice in petitions against decisions of administrative authorities. In addition, it hears certain specified civil matters as a court of first instance, such as appeals of decisions by the Chairman of the Knesset Elections Committee regarding disqualification of political parties from running for national election, appeal of decisions made by the Health Ministry under the Physician's Ordinance, and sundry specific matters. Over the last several years, in an attempt to relieve the Supreme Court of part of its caseload, appeals of certain administrative matters, such as prisoners' petitions, tenders, and building and planning issues have been transferred to the District Courts as the courts of first instance (see, e.g., Prisons Ordinance [New Version], 5731-1971, sects. 62A-62D; Planning and Building Law, 5725-1965, sects. 255A-255F). A recent proposal by a committee headed by a Supreme Court Justice aims, among other things, at allowing the Supreme Court to focus more on cases raising questions of general legal import, for example by creating another judicial instance or reshaping the jurisdiction of the lower courts, have yet to be implemented.

406. Generally, the Supreme Court hears cases in panels of three judges, except when the President or Deputy-President directs that a larger bench preside (Courts Law [Consolidated Version], 5744-1984, sect. 26). The Court may, at the decision of the President of the Court, decide to rehear a case which it has already adjudicated, when the case raises significant legal questions of first impression. Such further hearings are heard by a panel of five or any larger, uneven number of judges (Courts Law, sect. 30). Judgements of the Supreme Court are binding on the lower courts, but not on the Supreme Court itself, which may alter its holdings in a further hearing of a particular case or in subsequent cases (Courts Law, sect. 20).

407. Geographically, jurisdiction is divided among five judicial districts, with District Courts in Jerusalem, Tel-Aviv, Haifa, Beersheba and Nazareth. District Courts have original jurisdiction over all criminal and civil matters which do not fall within the jurisdiction of the Magistrates' Courts, and general residual jurisdiction to hear any matter which is not under the exclusive jurisdiction of any other court or tribunal. If the District Court has concurrent jurisdiction with another court over a particular matter, then it may adjudicate the matter so long as it has not been heard by the other court or tribunal (ibid., sect. 40). The District Courts also hear appeals from Magistrates' Courts. The court sits in a three-judge panel when hearing appeals, as it does in the trial of serious criminal offences. Most other matters are tried before a single judge (ibid., sect. 37).

408. Magistrates' Courts have original jurisdiction over most criminal offences which carry a punishment of up to seven years' imprisonment. In certain specified offences punishable by more than seven years' imprisonment, the State Attorney may still file the charge sheet in the Magistrates' Court, provided that any sentence of imprisonment actually imposed will not exceed seven years (ibid., sect. 51 (a)(1)). In civil suits for money damages, the Magistrates' Courts have jurisdiction over claims of up to NIS 1 million (approximately $300,000). In cases concerning real property, Magistrates' Court jurisdiction extends over matters pertaining to "use or possession", as opposed to "ownership", regardless of the amount of money involved. As a rule, cases in the Magistrates' Court are heard by a single judge, although the judge hearing the case or the President of the Magistrates' Court may direct that the case be heard by three judges (ibid., sect. 47).

409. Youth Courts under the Youth (Trial, Punishment and Modes of Treatment) Law, 5731-1971, and the Youth (Modes of Treatment and Supervision) Law, 5720-1960, operate within the framework of the Magistrates' Courts. Particular Magistrates' Court judges are empowered to handle a broad range of matters relating to the protection and treatment of minors in need, as well as criminal cases involving juveniles. Magistrates' Court judges are also empowered to try traffic offences, as defined by legislation (Traffic Ordinance [New Version], sect. 23) as well as other offences relating to motor vehicles.

410. In addition, Magistrates' Courts function as small claims courts for claims of less than NIS 8,000 (approximately $2,400). Such claims are always heard before a single judge; the courts are not bound by the rules of evidence and procedure; legal counsel is allowed only by permission of the judge. Small claims judgements may be appealed by leave to the District Court.

411. Under recent legislation, special Family Courts have been set up within the Magistrates' Court system, with specially appointed judges to deal with cases of adoption, custody, and other matters involving juveniles (Family Court Law, 5755-1995).

412. The Minister of Justice has also established Courts for Local Matters, which have jurisdiction over building offences, municipal offences and other specific controversies. The geographical jurisdiction of these courts may exceed that of the regional Magistrates' Court, and may include several local authorities (ibid., sects. 54-55).

413. **Labour Courts**. The Labour Court system consists of two instances. Regional Labour Courts hear cases involving employer-employee relations, tort actions related to labour relations, benefit fund disputes, certain social security matters, labour-related crimes and disputes related to specific collective agreements. The National Labour Court hears appeals as of right from the regional courts, and has original jurisdiction over disputes involving general collective labour agreements or between labour organizations. In appeals on criminal matters, the National Labour Court is bound by the law of criminal procedure and evidence, and its judgements are appealable by right to the Supreme Court. All other judgements of the National Labour Court may be challenged only by a petition to the High Court of Justice, which will review such judgements on restricted grounds of administrative legality (see, e.g., *Chatib v. National Labour Court*, 40(1) P.D. 673 (1986)). Except in the case of criminal appeals, as mentioned above, the rules of evidence and procedure are generally looser in the labour courts than in the courts of general jurisdiction.

414. Regional Labour Courts usually hear cases in three-member panels: one presiding judge and two "public representatives", who need not have legal training. The National Labour Court sits at first instance in a seven-member panel: three judges, two employees' representatives and two employers' representatives. In criminal appeals, the court sits as a three-judge panel; and in other matters, as a five-member panel, consisting of three judges, one employees' representative and one employers' representative, unless the President of the court decides upon a seven-member bench (Labour Courts Law, 5729-1969, sects. 32-36, 18-20).

Military Courts

415. The Military Justice Law, 5715-1955, creates six courts martial of first instance: the District Courts Martial, Naval Court Martial, Field Court Martial, Special Court Martial and Traffic Court Martial (Military Justice Law, sect. 183). The Naval Court Martial and Field Court Martial are established ad hoc for each case; the other courts martial are permanent. The Special Court Martial is empowered to try officers of the rank of lieutenant-colonel or higher on any charge, and any soldier charged with an offence punishable by death. Naval Courts Martial may be constituted on a naval vessel outside the coastal waters of Israel to try a soldier for an offence committed on that vessel, only if postponing the trial could severely harm discipline on the vessel and if the vessel is not expected to return to coastal waters within 21 days. Field Courts Martial are constituted only in periods of actual combat (Military Justice Law, sects. 461-474, 471).

Courts martial in general may not include judges whose rank is lower than that of the accused. The judge with the highest military rank presides. District Courts Martial sit in three- or five-judge panels, the majority of whom are officers, and at least one of whom is a legally trained military judge (ibid., sects. 201-202). A Naval Court Martial always sits as a three-judge panel, at least one of whom must be an officer. A Field Court Martial is composed of three judges, at least two of them officers, and one, if possible, having legal training (ibid., sect. 465). A Traffic Court Martial always sits as a single judge (ibid., sect. 209 B).

416. The decisions of all of the above courts are appealable to the Appeals Court Martial, which generally hears cases in a three-judge panel. In exceptional cases, the Appeals Court Martial will sit in a panel of five, either when the President of the Court so decides, when the Military Advocate General believes that the case involves novel legal issues, when the judgement being appealed involves the death penalty, or where the bench itself decides to expand its composition. Appeals from Traffic Courts Martial are typically heard by a single judge (ibid. sects. 210, 214-215 B).

417. Until 1986, judgements of the Appeals Court Martial were appealable on restricted grounds of administrative legality to the Supreme Court sitting as the High Court of Justice, for example in cases of patent error on the face of the record, lack of functional jurisdiction or violation of the rules of natural justice. Under a 1986 amendment to the Military Justice Law, 5715-1955, judgements of the Appeals Court Martial may be appealed by leave to the Supreme Court when the case raises legal questions of significant novelty or complexity (ibid., sect. 440 J).

418. A separate military court exists pursuant to the Defence (Emergency) Regulations of 1945, for trial of any offences under those regulations (Defence (Emergency) Regulations, sects. 12-15, 1945 P.G., supp. 2, p. 855). Many of these offences are parallel to those in the general penal law, and jurisdiction is concurrent with the general court system. Decisions of the military court established under the Defence (Emergency) Regulations may be appealed to the Appeals Court Martial.

419. The proceedings of courts martial are not entirely independent. All sentences imposed in a final judgement of a court martial must be brought before the proper "confirming authority" - either the IDF Chief of General Staff, the Minister of Justice or the military head of the judicial district, according to the type of case involved - who may either confirm the sentence, mitigate it, or amend it in almost any way he sees fit (Military Justice Law, sects. 442-444 A). These "confirming authorities" are bound to review the opinion of the military prosecutor prior to making their decision, but they need not give reasons for their decision. In addition, the heads of judicial districts, who need not have legal-training, may decide that a certain matter will be tried in disciplinary proceedings rather than in a court martial, or that a trial will be heard in camera, or to quash a charge sheet filed in a court martial subject to the consent of the military advocate (ibid., sects. 151, 171, 324 and 308 (a)).

Religious courts

420. During the British Mandatory period, the jurisdiction of the religious courts of various officially recognized communities, or denominations, was defined in the Palestine Order-in-Council, 1922-1947.* This Order gives the religious courts jurisdiction over matters of marriage and divorce, and "matters of personal status" of varying scope, depending on the court in question. Since establishment of the State, specific statutes were enacted for some of the recognized religious communities: the Kadis Law, 5721-1961 (for Muslims), the Druze Religious Courts Law, 5722-1962 (for Druze); and the *Dayanim* Law, 5715-1955 (for Jews) under the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953. The religious courts of the officially recognized communities still operate under section 54 of the Order-in-Council mentioned above. The substantive matters adjudicated by the different religious courts, and the overlap between the activity of religious and general courts, are discussed in greater detail under article 18.

421. In special cases, when the parties to a legal proceeding in respect of personal status belong to different religious communities - thus raising a conflict or ambiguity of the different religious courts over the matter - each party may appeal to the President of the Supreme Court who, after receiving substantive legal opinions of the different courts, will decide which court will have jurisdiction. Similarly, when it is not clear, due to the differing religious affiliations of the parties, that a dispute relating to "personal status" falls within the jurisdiction of *any* religious court, based on the substantive law of each denomination, then the President of the Supreme Court refers the matter to the decision of a special tribunal, composed of two Supreme Court judges and one judge whose religion is that of a religious court whose jurisdiction is in question (Palestine Order-in-Council, 1922-1947, sect. 55). Neither of the above arrangements will apply, however, in cases concerning the dissolution of marriage between two people of different religions. In such cases, the Attorney-General asks the religious court or courts involved for their opinion; on the basis of these opinions, the President of the Supreme Court decides which religious court shall have jurisdiction, or may refer the case to the civil District Court (Jurisdiction in Matters of Dissolution of Marriage (Jurisdiction in Special Cases) Law, 5729-1969, sects. 2, 6, 23).

Appointment of judges

422. All judges in courts of general jurisdiction in Israel are appointed by the President of the State, after having been selected by a nine-member Judicial Selection Committee. The Selection Committee is composed of three

---

* In addition to the Jewish and Muslim denominations, the following communities were officially recognized under Mandatory legislation: the Eastern Orthodox, Latin (Catholic), Gregorian-Armenian, Armenian Catholic, Syrian Catholic, Abyssianian (Oneatic), Greek Catholic, Maronite, and Syrian Orthodox. Palestine Order-in-Council, 1922-1947, second schedule. In the early 1970s the Evangelical Episcopal Church and the Baha'i faith were recognized as religious communities. *Kovetz Hatakkanot* 2037, 5730 (7 May 1970), p. 1564; *Kovetz Hatakkanot* 2673, 5731 (11 March 1971), p. 628.

judges of the Supreme Court, including the President of the Court; two representatives of the Bar Association, two members of the Knesset appointed by the Knesset, and two ministers elected by the Cabinet, including the Minister of Justice, who serves as Chair of the Committee (Courts Law [Consolidated Version], 5744-1984, sect. 6). Decisions are made by majority vote, except when the judicial candidate is an eminent jurist who has not practised as an attorney for the minimum period ordinarily required, in which case seven out of nine members of the Committee must approve the appointment. In practice, appointments are not made without the consent of the Supreme Court judges on the Committee. Thus, a delicate system of balances on the Committee has been sustained over the years, in which the Justice Minister retains the procedural prerogatives of his capacity as Committee Chair, but the votes of the politicians on the Committee have not been controlling. As a result, it may be said that judicial appointments in Israel are made, both as a formal and a practical matter, not on ideological or political grounds, but rather on the basis of professional merit.

423. The promotion of sitting judges to higher courts is also handled as part of the Committee's powers. The presidents of the different courts, however, are appointed by the Minister of Justice with the consent of the President of the Supreme Court, from among judges already sitting on the same court (Courts Law, sect. 9). On the Supreme Court, the practice has been to appoint the President and a Deputy President on the basis of seniority: when the President retires or ceases to serve for any reason, then the Deputy President with the most seniority on the Court is appointed President after the justice with the next-highest seniority is appointed as Deputy President.

424. When the Minister of Justice sees the need to appoint one or more new judges, a notice is published in *Reshumot*, the official gazette, and the Judicial Selection Committee is convened. Candidates may be proposed by the Minister of Justice, the President of the Supreme Court, or jointly by three members of the Selection Committee (ibid., sect. 7 (a)). A person who wishes to be considered for a judicial appointment will apply to the Courts Director, who is responsible for all administrative work related to the deliberations of the Selection Committee. Typically, dozens of applicants will apply for each vacant position. The Committee divides itself into two or more subcommittees composed of a Supreme Court Justice who acts as Chair, a member of the Knesset, and a representative of the Bar Association. Once the Courts Director has verified that the candidate has complied with the minimum qualifications required by law, the candidate has a personal interview with the subcommittee, at which legal questions are asked, as well as other questions intended to garner a general impression of the candidate's fitness for the bench. The candidates are asked to provide references, including judges; if they themselves are judges seeking appointment to a higher court, the opinion of the president of the court on which they currently sit will be requested. The representatives of the Bar Association, for their part, request an opinion on the candidate's suitability from the Bar Association District Committee in the area where the candidate practises. In addition, candidates who are sitting traffic judges, Magistrates' Court judges or Regional Labour Court judges must submit several judgements which they have handed down during the two years prior to their application for appointment. The meetings of the Judicial Selection Committee, as well as any information concerning the candidates, are confidential (see generally Adjudication Rules

(Rules of Procedure of the Judicial Selection Committee), 5744-1984, *Kovetz Hatakkanot* 2370). Public notice of the Committee's selections is made prior to their actual appointment, so that members of the public can object to or comment on the impending appointment.

425. Judicial appointments are made for life, until mandatory retirement at the age of 70. A judge may retire early with a pension if he or she has served the minimum number of years set by law (ibid., sect. 13). Under a 1984 amendment to Basic Law: Adjudication, a judge may be removed from office prior to retirement if the Judicial Selection Committee so decides by a vote of at least seven out of nine members (Basic Law: Adjudication, sect. 7 (4); Adjudication Rules (Working Arrangements Regarding the Termination of Office of a Judge in Accordance with a Decision of the Judicial Selection Committee), 1986, *Kovetz Hatakkanot* 498). However, this dismissal procedure has never been employed since its enactment. Normally, judges whose functioning has been found to be defective are approached informally by the president of the court on which they sit, or the President of the Supreme Court, in an effort to resolve the problem. The Basic Law also provides for early removal from office by decision of a special disciplinary tribunal appointed by the President of the Supreme Court, and composed of either three or five judges (including two or three Supreme Court judges, respectively) (Basic Law: Adjudication, sect. 13 (c); Courts Law, Part Five).

Substantive judicial independence

426. Basic Law: Adjudication formally mandates that any person having judicial authority shall be "bound to obedience solely to the law" (sect. 2). Similar statutory provisions provide for the adjudicative independence of judges of religious and military courts (Military Justice Law, sect. 184; *Dayanim* Law, 5715-1955, sect. 14; Kadis Law, 5721-1961, sect. 9 (for Muslim judges)). In addition, a series of legal rules and practical arrangement help promote the substantive independence of the judiciary, as described below.

427. **Criminal and civil immunity**. Judges in Israel are liable to criminal prosecution for offences not related to the discharge of their duties; except for any explicit contrary statutory provision, they enjoy immunity from criminal prosecution for any act done in the course of discharging judicial duties, even if the judge "exceeded his power or refrained from acting as he was required to do" (Penal Law, 5737-1977, sect. 23). A judge who commits fraud or bribery, however, in the discharge of his official functions will not enjoy immunity from criminal prosecution (Cr.App. 26/66, *Taher Hamed* v. *Attorne-General*, 20(3) P.D. 57). A criminal indictment against a judge cannot be filed except by the Attorney-General personally, and must be heard before a three-judge panel of the District Court, unless the judge agrees to be tried in the ordinary manner (Basic Law: Adjudication, sect. 12). Until 1981, this procedure was followed even in cases of simple traffic violations by judges. A judge who is formally indicted for a criminal offence may be suspended by the President of the Supreme Court pending outcome of the trial (ibid., sect. 14).

428. Judges also enjoy immunity from civil liability for tort actions relating to acts or omissions in the discharge of judicial authority (Civil

Wrongs Ordinance [New Version], sect. 8). It is not clear whether this civil immunity extends to instances of bad faith on the part of judges. (See G. Tedeschi et al., *The Law of Torts* (2nd ed., Jerusalem, 1976), p. 395.)

429. **Transfer to other courts**. A judge in a court of general jurisdiction may be transferred to a court in another locality upon the consent of the presidents of both courts concerned (Courts Law, sects. 36, 46). A permanent transfer to another court, however, may be done only with the consent of the President of the Supreme Court, or by decision of the judicial Disciplinary Tribunal. Thus, decisions regarding transfer of judges in general courts are made solely by other members of the judiciary. *Dayanim*, or judges in Jewish Rabbinical Courts, may be permanently transferred to another court by the Minister of Religious Affairs only with the consent of the President of the Supreme Rabbinical Court (*Dayanim* Law, 5715-1955, sect. 19). On the other hand, Kadis, or judges of the Muslim religious courts, may be transferred to another court permanently without need for consent of representatives of the judiciary (Kadis Law, 5721-1961, sect. 16).

430. Judicial salaries are normally determined by the Finance Committee of the Knesset. They are adjusted periodically according to the increase in the average wage, except when a larger, general increase in salary scales is voted by the Knesset Finance Committee. The Finance Committee cannot reduce the salaries of judges alone. Currently, the total budget for the courts system is included as part of the overall budget for the Ministry of Justice, which can lead to involvement by members of the executive branch in funding for the courts.

431. **Sub judice rule and contempt of court**. Two statutory restrictions on public comment regarding the courts and judicial proceedings help safeguard substantive judicial independence: the *sub judice* rule, which prohibits any comment that may influence the conduct or the result of a matter pending before the courts, and the prohibition of scurrilous attacks on judges (Courts Law, sect. 71; Penal Law, sect. 255). As with laws regarding protection of privacy, discussed under article 18, there is a statutory exception to the *sub judice* rule for publication in good faith of anything said or any event that occurs during a public court hearing. The rule has been interpreted by the Supreme Court to require a "reasonable likelihood" that the publication in question will influence the conduct or result of the proceeding (H.C.J. 223/88, *Sheftel v. Attorney-General*, 43(4) P.D. 356). Similarly, the prohibition against scurrilous attacks on judges exempts frank criticism in good faith on a judicial decision concerning a matter of public interest. Although the Supreme Court has interpreted this prohibition rather strictly, Cr.A. 364/73 *Seidman* v. *State of Israel*, 28(2) P.D. 620, in practice there are exceedingly few criminal investigations or trials under this provision.

Right to fair trial

432. **Public access to court proceedings**. The fundamental right to a "public hearing" in both criminal and civil court proceedings has been given constitutional status in Israeli law in section 3 of Basic Law: Adjudication, under which "a court will adjudicate in public except if stipulated otherwise

in a statute or if the court orders otherwise pursuant to a statute". Even prior to enactment of the above Basic Law, the Supreme Court buttressed the importance of public hearings in Israeli law:

> "It is a fundamental legal rule that the Court shall deliberate publicly. This principle is one of the pillars of criminal and civil procedure alike, and one of the most important instruments that aim to ensure fair and impartial legal proceedings. By virtue of this principle the operations of the Court, on the one hand, stand exposed to public scrutiny, in respect of objective management of the proceedings, adjudicative competence and discretion. On the other hand, the parties are placed before the public, which hears the proceedings and, aware of the facts presented before the court may, on the basis of information at its disposal, duly offer rebuttal evidence. Thus, perhaps, parties may be deterred from offering to the presiding judge unexamined or unreliable facts." Cr.App. 334/81, *Haginzar* v. *State of Israel*, 36(1) P.D. 827, 832.

433. The Courts Law [Consolidated Version], 5744-1984, after reiterating the general principle of open legal proceedings, sets out several specific exceptions to this principle: the court may decide that part or all of a certain matter may be heard in camera if it is necessary to do so to protect State security, to prevent harm to foreign relations, to protect morals, to protect the interests of a minor or incapacitated person, to protect the interests of a complainant or defendant in a sex-related crime; or if a public hearing may deter a witness from testifying, or from testifying freely (Courts Law, sect. 68 (b)). Motions for interlocutory decisions, including temporary orders, may be heard in camera with no need for justification by the court. The court may use its discretion to order hearings in camera "only after a good deal of deliberation and sparingly" (L.C.A. 176/68, *Anonymous* v. *Anonymous*, 40(2) 497, 499). Most "family matters", as defined by the new statute setting up a separate family court jurisdiction, are to be heard in camera unless the court decides otherwise (ibid., see also Family Court Law, 5755-1995).

434. Specific persons may be prohibited from entering the courtroom if, in the opinion of the court, that person's presence will deter a witness from testifying (ibid., sect. 69). Even when a hearing is held in camera, the court may permit certain people to be present during the entire hearing or part of it.

435. In criminal proceedings, the general rule is that the defendant must be present personally at all hearings (Criminal Procedure Law [Consolidated Version], 5742-1982, sect. 126). The courts generally have interpreted this rule strictly to mean that unless explicitly permitted by law, a defendant cannot waive the right to be present at proceedings against him, and the court may not allow him to do so (Cr.App., 247/66 *Sa'ada* v. *State of Israel*, 20(4) P.D. 36). In a recent case, however, the Supreme Court ruled that a defendant should not be required to attend all hearings if his personal appearance is not necessary. Even the voiding of an indictment in the defendant's absence

must undergo a re-examination to ensure that his rights and interests were adequately protected (Cr.App. 95/72, *Zindoleker* v. *State of Israel, Daf Lepraklit* 90). In certain limited circumstances, the court may allow part of a criminal proceeding to take place without the defendant. The "commencement of the trial", that is, the first hearing at which the charge sheet is read to the defendant, who then enters his initial plea and may raise other preliminary claims, may be held without the defendant in the case of petty crimes and misdemeanors to which the defendant has already confessed in writing to all the relevant facts, provided the defendant has been duly summoned; or when the defendant asks to be represented by legal counsel at the hearing and the court is convinced that no injustice will result (Criminal Procedure Law, sect. 128). Similarly, the court is authorized to hold a specific hearing in the absence of the defendant in cases of petty crimes or misdemeanors when the defendant has been duly summoned and the summons explicitly notifies him that the court may hold the hearing if he does not appear (ibid., sect. 130). However, if the defendant, having been summoned, credibly notifies the court in advance that he or she will be unable to attend the hearing for reasons not within his control, then the court will not conduct the hearing in his or her absence.

436. In any case, even if the defendant has confessed to all the facts alleged against him or her, the court may not impose a sentence of imprisonment on a person unless the defendant has first been given the opportunity to appear before the court, either by directly or through legal counsel, and raise claims in respect of the punishment to be imposed (ibid., sect. 129); and if the defendant is convicted without being present in court, under the limited exceptions above, then under no circumstances can he be sentenced except in person and after he has had the opportunity to raise sentencing claims (ibid., sect. 130). Moreover, if the defendant appears at any stage, even after conviction, after the court has held hearings in his or her absence, then the court must inform him or her of the right to ask that the hearings or conviction held in his or her absence be nullified; the court will grant his request if it is convinced that there was a reasonable explanation for the defendant's absence - or even if there is no such reasonable explanation, but the court nevertheless deems it proper to do so.

437. A court may also hear part or all of a criminal trial in the absence of a defendant upon the explicit request of defendant's counsel, if the court believes that holding the trial in the defendant's presence will be harmful to his or her physical or mental health (ibid., sect. 132). In certain offences involving State security, such as treason and espionage, the court may order that the defendant or counsel be dismissed from the courtroom for any part of the proceedings, if it deems that there is no other way to prevent State security from being compromised (Penal Law, sect. 128). When the court uses this discretionary authority, however, it must ensure that the defendant's capacity to defend against the charge sheet is not thereby impaired; the court may, for example, appoint a special defence counsel with security clearance for the purpose of a particular proceeding, or allow the defendant to choose special counsel for that purpose (ibid.). In addition, certain traffic offences and other minor crimes punishable by a fine may be tried in the defendant's absence, provided the defendant has had an opportunity to respond to the charges (Criminal Procedure Law, sect. 240).

438. Publication of any information regarding a matter which the court hears in camera, either by law or by its own decision, is forbidden without the court's permission. In addition, there is a statutory prohibition on publishing the name, likeness, address or any other potentially identifying information of any juvenile who is a defendant in any criminal proceeding, or a juvenile complainant or victim in any trial for sex offences (Courts Law, sect. 70). The court also has the discretion to forbid publication regarding court proceedings if necessary to protect the safety of a party, a witness or another person whose name has been mentioned in the course of the proceedings (ibid.). If necessary to protect the integrity of the criminal investigation, the court may also forbid publication of the name of a suspect or other information which may make it possible to identify him or her, so long as the suspect has not yet been formally charged.

439. In practice, appeals to the Supreme Court of decisions by the Israel Bar Association Disciplinary Tribunal are generally heard in closed door session, and the name of the attorney is not published. Disciplinary proceedings against civil service employees used to follow the same practice until a 1977 statutory amendment which made those disciplinary proceedings public (See Civil Service (Discipline) Law, 5723-1963).

440. In all criminal trials the court must maintain minutes which reflect "all that was said and occurred" during the trial, to the extent that it "relates to the trial" (Criminal Procedure Law, sect. 134). Should the judge decide that a particular matter which he or she is requested to record in the protocol does not "relate to the trial", and thus need not be recorded, he or she must so indicate in the protocol, to preserve a record of the request and the refusal to record the matter in question, for purposes of appeal (Cr.App. 288/55, *Horowitz* v. *State of Israel*, 10 P.D. 483). A mistake in the protocol may be corrected upon request of one of the parties up until the time for appeal of the judgement has elapsed (Criminal Procedure Law, sect. 137). Upon permission from the secretariat of the court, any person may investigate the protocol of a legal proceeding if there is no other justification for forbidding publication or publicity of the proceedings.

441. **Judicial bias and recusal**. Until 1992, there were no statutory provisions allowing for disqualification of judges for bias. Judges who did not recuse themselves, for example because of a family or business relation with one of the parties, were virtually never disqualified: the Supreme Court had held that motions for disqualification must be submitted to the judge whose removal was being sought; thus, as interlocutory decisions in criminal trials are not appealable under Israeli law, the decision of the judge on the issue of his personal disqualification was final as a practical matter. At the recommendation of the Supreme Court, among others, Cr.M. 525/63, *Samuel* v. *Attorney-General*, 18(3) P.D. 452, the Courts Law was ultimately amended to provide for disqualification of judges. Under 77A of that law, a party may request that a presiding judge disqualify himself or herself if there are circumstances "which tend to create a substantial suspicion of bias". Once such a motion is filed, the judge must decide it immediately, before making any other decisions; this decision is appealable to the Supreme Court (ibid., Criminal Procedure Law, sects. 146-148). Motions for disqualification may be raised once the trial has commenced. Another mechanism which may be employed to reduce the possibility of bias, generally before the trial begins, is a

motion to the President of the Supreme Court to order a change of venue in a case being heard in the lower courts. If the trial has already commenced, then the President of the Supreme Court may issue such an order only with the consent of the judge who has begun hearing the case (Courts Law, sect. 78). In practice, the Police or the District Attorney may transfer a criminal file to another district at the investigation stage, or after the police have recommended filing a charge sheet, if there are objective grounds to presume that holding the trial in the defendant's home district may make it difficult to have an impartial trial.

442. **Presumption of innocence**. In 1994, the Penal Law was amended to include the fundamental presumption, thoroughly established in the case law, that the accused in a criminal case is innocent until his guilt is proved beyond a reasonable doubt (Penal Law, sect. 34T). The basic structure of the criminal process, beginning with the initial burden imposed by law on the prosecution to prove its case against the accused, through the right of the accused to bring evidence in his defence, without requiring him to prove his innocence, and culminating in the court's decision based on a strict standard of criminal liability, is both shaped by the presumption of innocence and gives the presumption its practical embodiment. The accused has the right to deny all or part of the facts alleged in the charge sheet, with the result that the prosecution will have to prove the guilt which it ascribes to him (Criminal Procedure Law, sect. 152(a)). Even if the defendant admits all of the facts alleged in the charge sheet, he may still claim any of a number of preliminary claims that may relieve him of criminal liability (ibid., sect. 124).

443. **Right to be informed promptly of charges**. As discussed under article 9, suspects who are arrested, with or without a warrant, must be informed at the time of arrest of the reason for the arrest. If the arrest is by warrant, then the suspect must receive a copy thereof, which includes a summary of the charge. Similarly, if the police officer in charge of a police station decides to keep a suspect under arrest for a period of up to 24 hours or to release him or her on bail, the arrested person must be informed of the charge of which he is suspected in a language which the suspect understands. In detention hearings prior to filing a charge sheet, the suspect will learn of the charges of which he or she is suspected at the time of periodic hearings before a judge. If the suspect is in fact indicted, then he or she must be served promptly with a written summons to trial, accompanied by a copy of the charge sheet which, among other things, describes all material facts constituting the offence, and indicates the time and place of alleged events to the extent that they can be ascertained (Criminal Procedure Law [Consolidated Version], sect. 85).

Right to prepare defence and communicate with counsel

444. **Review of prosecution evidence and materials**. Immediately upon being formally charged with a felony or misdemeanor, the defendant has a right to inspect and copy all "investigation material" in the prosecutor's possession (Criminal Procedure Law, sect. 74). This right to inspect the investigation material entails a duty on the part of the prosecution to prepare such investigation material in a form that can be reviewed by the defendant, e.g., by setting all substantive testimony of witnesses into writing. Only statements by witnesses on formal matters which are insignificant to

examination of the charges need not be set in writing, but the prosecutor must notify the defendant or his counsel reasonably in advance of trial of the name of the witness and the nature of the testimony on such formal matter (ibid., sect. 77). The right to inspect investigation material does not, however, include material which may be privileged by law, such as correspondence between attorney and client, psychologist and patient, or material the non-disclosure of which may be permitted for reasons of national security (ibid., sect. 78). In any case, the prosecution may not introduce any such secret evidence, either written or oral, at trial if the defendant has not had a reasonable opportunity to review and copy them, unless the defendant has waived this right (ibid., sect. 77).

445. Should the prosecution not promptly or properly honor the defendant's right to inspect the prosecution's evidence, the defendant may apply to the trial court to enable inspection of the material in question. Under a recent amendment to the Criminal Procedure Law, decisions of the trial court on the right to inspect prosecution material are subject to interlocutory appeal, unlike most intermediate decisions in criminal trials (ibid., sect. 74). Prosecution material that must be made available to the defence has been deemed to include agreements with prosecution witnesses (Cr.App. 79/73, *Lavi* v. *State of Israel*, 28(2) P.D. 510), investigation files against other persons which have relevance for the defendant's guilt or innocence (Cr.App. 179/78, *Gavron* v. *State of Israel*, 34(2) P.D. 692), internal police correspondence and evaluations, if it is shown that they are "relevant" to the investigation or the indictment (Cr.App. 364/73, *Zeidman* v. *State of Israel*, 28(2) P.D. 627), and, in some cases, investigation files against witnesses (H.C.J. 233/85, *al-Hozayil* v. *Israel Police*, 39(4) P.D. 124, 130).

446. The rights of persons in detention to meet with legal counsel during the criminal investigation are discussed under articles 9 and 10 above. Once a person is formally charged with an offence, he or she is to be allowed all reasonable opportunities to communicate with his or her legal counsel and to meet with him in order to prepare the defence (Prisons Ordinance, sect. 45). An attorney whom a prisoner has asked to see may visit him or her every day, except Saturdays, and at any reasonable hour, provided that the prisoner has given advance notice of such meeting. The meetings between the defendant and counsel take place in a specially designated area where privacy may be ensured to the extent that security conditions at the jail and considerations of State security so allow (Prisons Regulations, 5738-1978, regulation 29).

447. **Right to trial without undue delay**. Under the Criminal Procedure (Enforcement Powers - Arrest) Law, 5756-1996 (sects. 59-61), a suspect must be released if he is not formally charged within 75 days of arrest; if the trial does not begin within 30 days of the indictment, provided the defendant is in detention, unless the defendant or his or her counsel requests a postponement; and if a final judgement is not handed down within nine months. Once the indictment is filed, the court is to schedule the beginning of trial for the earliest possible date under the circumstances (Criminal Procedure Regulations, 5734-1974, regulation 19). If the charge sheet is filed by the Attorney-General or the State Attorney's Office, then at least 14 days must elapse between service of the charge sheet upon the defendant and commencement of the trial; if the charge sheet is filed by a prosecution department of another government authority, such as the police or tax authorities, then at

least seven days must elapse after service of the charge sheet. With the defendant's consent, these minimum periods may be shortened (ibid., regulation 20 A). In other, minor offences, a trial may be held shortly after service of summons on the defendant, provided the defendant has adequate time to arrange to come to court, and does not wish to postpone the trial in order to hire defence counsel or to summon witnesses (ibid., regulation 44). Once the evidentiary hearings have commenced, the court must continue the trial without interruption until it is finished, unless it finds that it is "impossible" to do so (Criminal Procedure Law, sect. 125). In practice, the sheer volume of cases on the dockets of the general courts make it unfeasible to hear every criminal case without interruption.

448. Other procedural mechanisms which aim at promoting the efficiency of criminal trials include the opportunity for the defendant to admit all or part of the facts in the charge sheet, which then need not be proved by the prosecution; the necessity of raising at the first hearing preliminary claims against the indictment which, if accepted by the court, would terminate the trial, such as lack of jurisdiction, defects in the charge sheet, immunity, a former acquittal or conviction regarding the same acts, and so on (Criminal Procedure Law, sect. 149); and the joinder, in certain circumstances of several defendants and offences in a single trial (ibid., sects. 86, 95).

Right to counsel

449. The right of a defendant to be represented by legal counsel in criminal proceedings has long been recognized as fundamental in Israeli law, and thus may be restricted only by explicit statutory authorization (H.C.J. 344/65, *Hijazi* v. *Minister of Justice*, 19(4) P.D. 203). Typically, a defendant engages legal counsel of his or her own choice, who, once empowered by the defendant, may represent him or her before any State or local authority and any other body or person carrying out public functions by virtue of law (Chamber of Advocates Law, 5721-1961, sect. 22). Moreover, the attorney, once appointed, must represent the defendant in all stages of the criminal proceeding, including appeal, and may not be released from representing him without the court's permission (Criminal Procedure Law, sect. 17(a)). The defendant is limited in his or her choice of counsel to accredited members of the Israeli Bar Association, except in trials against foreign nationals for offences punishable by death under the Crime of Genocide (Prevention and Punishment) Law, 5710-1950, or the Nazi and Nazi Collaborators (Punishment) Law, 5710-1950, in which case a foreign defence counsel may be appointed by approval of the Minister of Justice. Such foreign defence counsel was permitted in the trials of Adolph Eichmann and John Demjanjuk, the two cases prosecuted under those laws. The only limitation on the right to be represented by counsel of one's choice occurs when the Minister of Defence certifies in writing that considerations of State security make it necessary that the defendant be represented only by a person with security clearance to act as defence counsel (Criminal Procedure Law, sect. 14; Military Justice Law, 5715-1955, sects. 311, 318). In a trial for espionage or treason, the court may rule, as mentioned above, that the defendant or counsel may be dismissed from the courtroom if there is no other way to prevent compromising the security of the State. In such circumstances, the court must ensure that the defendant's right to defend himself is not impaired, and may appoint

defence counsel for that particular proceeding, or allow the defendant to choose counsel with appropriate security clearance. Such cases are exceedingly rare.

450. **Appointment of counsel by the court: right to defend oneself**. If the defendant has not engaged counsel on his or her own, the court bears an obligation to appoint counsel if the defendant is charged with murder or another offence punishable by death or life imprisonment, or if he or she is charged in the District Court with any offence punishable by at least 10 years' imprisonment; if the defendant is less than 16 years of age and the proceeding is not held in Youth Court; if the person is deaf or dumb; or if there is concern that the defendant is mentally ill or disabled (Criminal Procedure Law, sect. 15). There is no obligation to appoint counsel in criminal appeals. In addition to those cases in which the court must appoint counsel, the court may also appoint counsel at its discretion, at the request of the defendant, the prosecutor, or at its own initiative, if the defendant does not have the means to pay for legal counsel according to criteria set out in legislation (ibid., Defence Counsel Law, 5755-1995). A Public Defender's Office was established by legislation in 1995, and has begun to operate in certain parts of the country, with the intention of gradually expanding its reach to the entire population in all judicial districts. The costs of appointed counsel, as well as other costs of legal defence, such as remuneration to witnesses, is paid out of the State treasury.

451. In principle, whenever the court bears an obligation to appoint counsel for the defendant, as mentioned above, the defendant may not refuse the appointment, nor may the court hold a hearing in the absence of counsel (Cr.App. 859/78, *Zaideh* v. *State of Israel*, 33(3) P.D. 255). Even if the defendant does not want to be represented by counsel but prefers to represent himself or herself, the court must not only explain to the defendant that he or she is entitled by law to appointed counsel, but must attempt to convince the defendant to agree to the appointment (Cr.App. 383/87, *Hajaj* v. *State of Israel*, 42(4) P.D. 57). The court will usually appoint counsel without the defendant's consent, in the hope that appointed counsel will find a way to convince the defendant of the efficacy of legal representation (ibid.). Only if the court is convinced that there is absolutely no possibility of cooperation between defendant and appointed counsel, such that the appointment will be wholly ineffective, may the court allow the defendant to represent himself at trial. Before allowing the defendant to appear pro se, however, the court must be convinced that he can reasonably manage his or her defence. In any case where the defendant is not represented by counsel, the court must make special efforts to make up for the defendant's lack of legal expertise by guiding the defendant in detail with respect to his or her rights, to legal issues invoked in the case, to the risks involved in different courses of action; to summoning and cross-examining witnesses; and to raising any claims against the prosecution's case (Criminal Procedure Law, sects. 143, 152, 161).

452. **Right to examine witnesses and to confront adverse witnesses**. In principle, the defendant is entitled to call and examine witnesses on his or her behalf who have not already testified as a witness for the prosecution, and to cross-examine prosecution witnesses, subject to general restrictions of the law of evidence and criminal procedure. The court may deny this right only when it deems the evidence to be brought by the witness to be irrelevant

or inadmissible, or when it concludes that the defendant requested a particular summons for reasons other than clarifying the questions raised by the case (ibid. sect. 106). Prior to service of summons on a witness, the defendant typically has to deposit with the court a certain amount of money, or furnish security for the witness' expenses. Defendants who are unable to post such security, or who have had counsel appointed by the court, will be relieved of this obligation (Criminal Procedure Law, sects. 105-111, 172-181).

453. **Right to interpreter**. Should it come to the attention of the court that the defendant does not know Hebrew, it must appoint a translator who is paid out of the State treasury, or, alternatively, the judge will act as a translator. Evidence presented to the court in a language other than Hebrew or some other language familiar both to the court and the parties, must be translated by a translator and read into the record in Hebrew, unless the court directs otherwise (ibid., sects. 140-142).

454. **Protection against self-incrimination**. During the criminal investigation, as at trial, the defendant (or suspect) has a right to be silent. At trial, the court bears a duty to inform the defendant that he or she has the right either not to testify on his or her own behalf, or to testify, in which case he or she may be cross-examined (ibid., sect. 161). The Court must also explain to the defendant that a decision not to testify may be deemed to support other incriminating evidence against him or her (ibid., sect. 162). An absence of such explanation to the defendant of his rights may, under certain circumstances, be grounds for invalidating a conviction (Cr.App. 555/77, *Rabi* v. *State of Israel*, 32 (2) 769).

455. **Appeal of conviction and sentence**. All judgements in criminal cases may be appealed by right to the next highest judicial instance (Courts Law, sects. 41, 52). The defendant and the prosecution may appeal both the conviction and the sentence imposed by the trial court. Any judgement which imposes the death penalty is subject to automatic appeal, whether or not the defendant himself wishes to appeal (Criminal Procedure Law, sect. 202). If the right of appeal is to the District Court from one of the lower courts, then the defendant may have a second appeal, to the Supreme Court, if leave is granted either by the District Court or the Supreme Court. Such permission for a second appeal will be granted if the appellant raises "an important legal question that justifies an additional appeal" (Cr.M. 167/79, *Ferdman* v. *State of Israel*, 34(1) P.D. 730); if such a second appeal is the only way to prevent a particularly unconscionable and unjust result (Cr.A. 465/70, *Arbib* v. *State of Israel*, 25(1) P.D. 557); or if extraordinary circumstances justify doing so, e.g. when the judgement on first appeal is substantially unclear, or was heard in the absence of the defendant (Cr.App. 185/64, *Biton* v. *State of Israel*, 18(4) P.D. 366). In both cases - appeal by right and by leave - the court must explain to the defendant the nature of the right to appeal and the deadline for doing so.

456. Although the court of appeal generally tends not to intervene in the factual findings of the trial court, which are based, among other things, on the trial court's impression of the credibility of testimony given in open court, the appeals court may allow new evidence to be brought during the appeal if there was no way the evidence could have been brought earlier, and the new evidence would likely have a substantial bearing on the defendant's

guilt or innocence, such that admitting the new evidence is "necessary in the interests of justice" (Courts Law, sect. 211; see also Cr.App. 476/79, *Boulos* v. *State of Israel*, 35(1) P.D. 793). In such cases, the appeals court will generally remand the file to the trial court for the hearing of evidence and issuing of a new judgement. On the same rationale, the court of appeal may reach a different conclusion from the facts found by the trial court, or may decide that those facts cannot support the conclusions reached by the trial court (Courts Law, sect. 212). In general, the appeals court may accept or reject all or part of the appeal, may amend the judgement of the trial court, issue another judgement in its place, or remand the case to the trial court with instructions (ibid., sect. 213). The appeals court may also convict the defendant of a different crime than that of which he was convicted by the trial court, provided that the facts proven at trial support such a conviction, that the defendant has a chance to respond to such "new" charges, and that the sentence will not exceed that maximum allowable under the offence with which he or she was originally charged (ibid., sect. 216).

457. **Further hearing**. During the period of the British Mandate, decisions of the Supreme Court were appealable to the Privy Council in London. An analogous procedure was reintroduced into Israeli law by the institution of the further hearing, under which the Supreme Court may reconsider with an expanded odd-numbered panel of judges certain legal issues that it has previously decided by a three-judge panel, or even in some cases by a five-judge panel, if it deems those legal issues to be of particular importance, difficulty or novelty, or if the rule laid down by the three-judge panel conflicts with earlier decisions of the Court. A further hearing may be ordered by the three justices when they hand down their decision on appeal, or by the President of the Supreme Court at the request of either of the parties (Courts Law, sect. 30). The further hearing is not, strictly speaking, another appeal: it will not be granted for the purpose of reviewing the severity of the sentence or the correctness of factual findings (F.H. 6/82, *Yanai* v. *State of Israel*, 36(3) P.D. 94, 99; F.H. 13/72, *Tal* v. *State of Israel*, *Daf Lepraklit* 95). On the other hand, a further hearing will not be held if the decision therein cannot influence the ultimate outcome of the criminal proceedings (F.H. 516/91, *Benderly et al.* v. *Pension Fund of Members of Egged Ltd.*, 45(3) P.D. 356, 360).

458. **Retrial**. The President or Deputy President of the Supreme Court may order a retrial of a criminal conviction, upon request of the defendant, his or her descendants, or the Attorney-General, in any of the following four instances:

(a) A court has determined that any of the evidence brought during the trial of the defendant is false or forged, and there are grounds to believe that the absence of such evidence might have altered the outcome of the case in favour of the sentenced person;

(b) Facts or evidence have come to light which, by themselves or together with other material that was already before the trial court, is likely to alter the outcome of the case in favour of the sentenced person;

(c) Another person has in the meantime been convicted of the same offence, and from the circumstances that came to light at the trial of that other person it appears that the person originally convicted for the offence did not commit it;

(d) A substantial suspicion has arisen that the conviction has resulted in a miscarriage of justice.

(Courts Law, sect. 31 (a) (1)-(3)). The right to request a retrial is independent from the right to various appeals discussed above: a convicted person may ask for a retrial regardless of whether or not he or she has appealed the judgement, or whether the time for appeal has lapsed. A retrial may be heard by the Supreme Court or a District Court, regardless of where the trial was originally heard. If the retrial is heard by a District Court, then its judgement on retrial may be appealed to the Supreme Court as of right, in the same manner as any criminal judgement by a court of first instance (Courts (Procedures in Retrial) Regulations, regulation 13).

459. **Compensation for person unjustly convicted**. If the conviction of a person is quashed on retrial, and the person has served at least part of the original sentence, then the court may make any order it deems fit to indemnify a sentenced person. If the accused has died in the interim, the court may issue such an order to the benefit of the accused's descendants or another third party (Courts Law, sect. 31). In addition, the defendant may have a cause of action in a suit for damages under the Civil Wrongs Ordinance against the persons or entities, both private and public, who were responsible for the miscarriage of justice through malice, negligence or oppression.

460. **Double jeopardy and related rules**. Under sect. 5 of the Criminal Procedure Law, a person may not be tried for an act "if he has previously been acquitted or convicted of an offence constituted by the same act". Pursuant to this general principle, a defendant may raise the preliminary claim, immediately following the reading of the charge sheet in open court, that he or she has already been acquitted or convicted for the same act, or that another criminal trial is pending against him in respect of that act (Criminal Procedure Law, sect. 149 (5)-(6)). The Law creates one exception to the rule: if the act in question has resulted in the death of a person who was still alive when the defendant was originally tried, then the defendant may be tried in connection with the same act, provided that the first trial ended in conviction. Annulment of a charge sheet for any reason will not prevent a subsequent indictment for the same act, as it is deemed not properly to constitute a "judgement of acquittal" (Cr.App. 250/77, *Kryzcynski* v. *State of Israel*, 32(1) P.D. 94). The Supreme Court has drawn a doctrinal distinction between the statutory protection against subsequent indictment, which is based on the principle of *res judicata*, and the common-law "double jeopardy" rule, which derives from the desire not to put a defendant under risk of conviction for the same act more than once (Cr.App. 72/60, *Attorney-General* v. *Geoaya*, 14 P.D. 1093). The "double jeopardy" rule is deemed to include those situations in which a defendant has been properly charged with an offence but the trial did not end in a judgement of acquittal or conviction; it does not include cases in which a charge sheet is annulled, in which proceedings are suspended indefinitely or otherwise "interrupted" but the law contemplates the possibility of "resuming" the proceedings (ibid.). Due to the narrow range of

application of the double jeopardy rule in Israeli law, it has not yet been accepted as the basis for quashing an indictment in any particular case, even though the courts acknowledge the existence of the rule (see Y. Kedmi, *On Criminal Procedure* (Updated edition, Tel Aviv University, 1993, pp. 589-590).

461. **Juveniles in the criminal process**. The law and practice relating to the treatment of juveniles in the criminal process are discussed in detail under article 10 above. The courts in Israel are bound not only to observe the explicit special statutory provisions regarding juveniles in the criminal process, but must take the minor's age into account in every stage of the process (Cr.M. 190/79, *State of Israel* v. *Doron*, 33(3) P.D. 589, 590). Mention may also be made of special rules allowing the parents or another person associated with a juvenile defendant to be involved as a sort of quasi-party in the criminal proceedings, by giving them the right, upon court permission, to file motions and examine witnesses, or to require their presence at court hearings (Youth (Trial, Punishment and Modes of Treatment) Law, 5731-1971, sects. 19, 28-29). The court may also order that the juvenile be absent from the courtroom for a particular hearing or part thereof if it deems it in the child's best interest to do so (ibid., sect. 17).

462. **The Israel Bar Association**. The organization and functions of the Bar Association are determined in the Chamber of Advocates Law, 5721-1961. The Israel Bar is a corporation; its actions are subject to the review of the State Comptroller, which gives it the character of a quasi-public institution for certain purposes, such as jurisdiction of the High Court of Justice over the legality of decisions by the Bar's administrative bodies. The principal statutory functions of the Bar are to accredit attorneys, to supervise the apprenticeship ("articling") of articled clerks prior to their qualifying examinations, and to hold disciplinary proceedings for actions of its members. In practice, the Bar is highly active in many areas of legal endeavour and in public life generally. It is thoroughly involved in the legislative process, commenting on legislation when it deems fit, forming special committees which draft legislation, lobby Knesset members and participate in other aspects of the legislative process. The Bar also refers applicants to mediation by lawyers according to fields of specialization, has published the official reports of Supreme Court judgements, offers continuing education courses for practising attorneys, maintains dozens of active committees in such areas as human rights, judicial administration, international relations, and so on. Two representatives of the Bar Association are voting members of the nine-person Judicial Selection Committee, which decides on the appointment of all judges in the courts of general jurisdiction. Attorneys are bound by law to act faithfully and diligently in the best interest of their clients (Chamber of Advocates Law, sect. 54). The ability of attorneys freely to assist their clients is safeguarded, to a certain extent, by the attorney-client privilege, under which the attorney may not disclose any matters or documents exchanged between himself and his or her client which are related to the attorney's professional representation of the client, unless the client waives this privilege (ibid., sect. 90). Other guarantees that enable lawyers to assist their clients are discussed under articles 9 and 10.

Article 15 - Prohibition of ex post facto laws

463. The principle prohibiting ex post facto legislation is firmly rooted in the legal tradition of Israel. The Talmud, in a passage often quoted in Israeli case law, states "There shall be no punishment without prior warning" meaning that no person may be punished for conduct which was not a crime at the time of commission.

464. Until 1994, there was no Israeli legislation generally prohibiting retroactive application of substantive criminal law norms. However, the principle of non-retroactivity has long been accorded the status of a constitutional principle in the case law. In *Hacksteter v. State of Israel*, the Supreme Court held that:

> "Even if Israel still has no legislative provision prohibiting retroactive application of the criminal laws, it is clear that the rule that there is no punishment except according to the law valid at the time of commission of the offence, is the law in Israel ... [and is] a constitutional legal rule in a State in which the rule of law obtains, so long as legislation does not stipulate otherwise." (Cr.A. 557/71, *Hacksteter v. State of Israel*, 26(2) P.D. 240, 245)

See also H.C.J. 221/51, *Aslan v. Military Governor of the Galilee*, 5 P.D. 1480, 1486.

465. In two instances, specific criminal legislation stipulated that provisions more lenient than the laws they replaced could be applied retroactively. Under section 42 of the Penal Law Amendment (Modes of Punishment) Law, 5714-1954, the substantive provisions of that law, which deal with maximum and minimum sentencing guidelines for different types of offences, would apply to a person who committed an offence prior to its entering into force if such provisions "benefit or are more lenient to him".* Section 25 (b) of the Youth (Adjudication, Punishment and Treatment) Law, 5731-1971, prohibits imposing the death penalty, and "notwithstanding any other law" provides that there is no obligation to impose a sentence of life imprisonment, mandatory imprisonment or a minimum punishment on a person who was a minor at the time he committed the offence. This provision replaced an earlier one which prohibited imposition of life imprisonment on offenders who were minors at the time of conviction. The Supreme Court held that the later, more lenient sentencing provision applied retroactively to persons who committed the offence prior to its enactment. Cr.A. 485/76, *Vanunu v. State of Israel* (unpublished).

466. The only legislation of general application bearing on ex post facto laws until the 1994 amendment of the Penal Law, 5737-1977, could be found in section 10 of the Law and Administration Ordinance, 5708-1948, which provides

---

* This provision was not included in the general Penal Law, 5737-1977, even though the other provisions of the earlier statute were incorporated therein, as the 23 years that elapsed until passage of the Penal Law made what was essentially a transitional provision irrelevant as a practical matter.

that "legislation shall enter into force on the date of publication", but allowed for the possibility of retroactive application as of a specific earlier date; and in section 22 (3) of the Interpretation Law, 5741-1981, under which "repeal of a law shall not affect a right or duty under the repealed law or a sanction for violation thereof".* The latter provision would seem to imply a prohibition of *all* retroactive application of criminal law norms, including those that were beneficial to the offender. Nevertheless, the Supreme Court sometimes interpreted criminal legislation to require retroactive application of a more lenient sentencing provision, without explicit statutory authorization. Cr.A. 348/67, *Anonymous v. Attorney-General*, 22(1) P.D. 225, 232.

467. Amendment No. 39 of the Penal Law, which came into force on 23 August 1995, introduced several general provisions regarding retroactive application of the criminal law which, taken together, bring Israeli legislation into strict compliance with the obligations under article 15 of the Convention. Sections 3-6 of the Penal Law provide as follows:

> "3. (a) Legislation that creates an offence shall not apply to an act committed prior to the date of its publication according to law or the date of its entering into force, whichever is later.
>
> "(b) Legislation that determines a punishment for an offence which is more severe than the punishment applicable at the time the offence was committed shall not apply to an act perpetrated prior to its publication according to law or prior to its entering into force, whichever is later; however, a revaluation of a fine shall not be deemed an increase in punishment.
>
> "4. If an offence is committed and its prohibition is repealed by legislation, criminal liability for its commission shall be annulled, proceedings that have been commenced shall be ceased, the execution of any sentence shall be terminated, and there shall be no further future consequences deriving from the conviction.
>
> "5. (a) If an offence has been committed with regard to which a final judgement has not yet been given, and the definition of the offence or the liability or punishment therefor is changed, the legislation that is more lenient on the offender shall apply; 'liability therefor' shall include the application of exceptions to criminal liability for the act.
>
> "(b) If a person has been convicted of an offence by final judgement, and afterwards a punishment is determined by legislation for that offence which is more lenient in degree or in type than the punishment imposed on him, his punishment shall be the maximum punishment determined by the subsequent legislation, as if it had been imposed from the beginning.

---

* In 1994, the words "or sanction for violation thereof" were stricken from this provision by amendment, in the context of Amendment No. 39 of the Penal Law, which is discussed in the next paragraph. *S.Ch.* 1335 (5754), p. 358.

"6. The provisions of sections 4 and 5 shall not apply to an offence under legislation which is to remain in force for a particular period, or which by its nature may change from time to time."

S.Ch. 1335 (5754), p. 358. It may be noted that the retroactivity provisions cited above also apply to the substantive provisions of Amendment No. 39 itself, which introduce new defences to criminal liability and several changes in the facts necessary to establish criminal liability, both in general and with respect to specific offences. Most of the substantive changes in Amendment No. 39 define standards more lenient on criminal defendants than those in prior legislation.

468. **Military Courts**. The non-retroactivity provisions in Amendment No. 39 of the Penal Law were not explicitly integrated into the Military Justice Law, 5715-1955, or other legislation dealing with adjudication in Military Courts. In practice, however, the general provisions of the Penal Law are applied in the Military Courts. Prior to the enactment of Amendment No. 39, the Military Courts applied the principle derived from case law which forbade retroactive application of substantive criminal law norms. Now they will also apply the principles contained in sections 3-6 of the Penal Law.

469. Although the retroactivity provisions of the Penal Law are still quite new, their effect may be illustrated by the following example. In a case still pending before the Jerusalem Municipal Court, the defendant was previously convicted of building without a permit, in violation of the Building and Planning Law, 5725-1965, and currently is being tried for non-compliance with a court order to remove the portion of her house that was built without a permit. During the course of trial, Amendment No. 39 came into force. The amendment includes not only the general provisions regarding retroactive application of criminal law norms that are more lenient on the offender, but also a new *de minimis* exception to criminal liability, under which a person shall not bear criminal liability for an act that, in view of its nature, circumstances, results and the public interest, is of minor import (sect. 34Q). The defendant was specifically allowed to claim an exemption from liability under section 34Q. Cr.A. 22/96, *Witt v. State of Israel* (Jerusalem District Court) (unpublished). In several other cases in which the defendant has been charged with incitement or attempt to commit an offence for actions preceding the enactment of Amendment No. 39, the new provisions in that amendment regarding exemption due to evidence of remorse have been deemed to apply retroactively.

470. The Nazi and Nazi Collaborators (Punishment) Law, 5710-1950, was enacted to prosecute those guilty of crimes against humanity and war crimes committed during the Second World War. The application of the Crime of Genocide (Prevention and Punishment) Law, 5710-1950, enacted pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide, is not limited in time, and may be applied retroactively. As with similar legislation in other countries, these laws are founded in the notion that the crimes prohibited by them are deemed to have constituted a violation of the law of nations at the time when they were committed, including during the Second World War. They therefore comply with the provisions of article 15 (1).

471. Under section 50 of the new Basic Law: Government, emergency regulations cannot impose "retroactive punishment". Therefore, even though emergency regulations take precedence over ordinary legislation, they cannot impose criminal norms retroactively. As Israel has been in an officially declared state of emergency during the whole course of its existence, the retroactivity provisions in the Penal Law apply, as a practical matter, during a state of emergency. The question whether emergency regulations may restrict the retroactive application of criminal norms that relieve an offender from liability or impose a lighter punishment - or whether such a restriction is itself a form of "retroactive punishment" - has yet to be brought before the courts.

472. The prohibition of ex post facto laws does not apply under Israeli law to procedural criminal law norms, nor to the law of evidence, but rather only to substantive norms. Any change in the law of criminal procedure or evidence will apply to proceedings that began before such change, unless explicitly indicated otherwise in legislation. C.A. 238/53, *Cohen and Buslik v. Attorney General*, 8 P.D. 4, 35; F.H. 25/80, *Katashvili v. State of Israel*, 35(2) P.D. 457.

473. **Basic Law Bill: Due Process Rights**. In February 1998, the Ministry of Justice completed its draft of a new Basic Law which articulates fundamental individual rights related to legal proceedings, including the freedom from retroactive punishment. Section 7 of the Bill provides:

> "(a) A person will not bear criminal liability for an act or omission which was not an offence according to law at the time of the act or the omission.
>
> "(b) A person shall not receive a punishment more severe than that to which he would have been subject under the law at the time of commission of the offence; however, revaluation of fine amounts according to the rate of inflation is not deemed a more severe punishment."

474. Enactment of Basic Law Bill: Due Process Rights will give the prohibition on ex post facto laws fully entrenched constitutional status, which, among others, will enable the Supreme Court to declare invalid any legislation which does not meet the criteria of its limitation clause.

Article 16 - Recognition as a person before the law

475. All human beings within the jurisdiction of the State of Israel are recognized as persons before the law. Sections 1 and 2 of the Capacity and Guardianship Law, 5722-1962, provide:

> "1. Every person shall be capable of having rights and obligations from the completion of his birth until his death.
>
> "2. Every person shall be capable of performing legal acts, unless he has been deprived of that capacity or it has been restricted by a statute or by the judgement of a court of law."

These principles apply to aliens, who are granted most basic constitutional rights and are entitled to the protection of the courts; they also apply to prisoners and detainees, as discussed in greater detail under articles 7 through 10. As mentioned under article 8, involuntary servitude is directly prohibited by law, and slavery is deemed prohibited by relevant sections of the Penal Law, 5737-1977.

476. The recognition of every person before the law is given explicit constitutional footing in the draft Basic Law: Due Process Rights, which reiterates the principles cited above in sections 1 and 2 of the Capacity and Guardianship Law. As of the submission of this report, the draft Basic Law is being circulated prior to submission to the Ministerial Committee on Legislation.

477. Under the Capacity and Guardianship Law, persons who are declared incompetent, such as the mentally ill or disabled, and minors do not lose their status as subjects before the law. Rather, the performance of any legal acts affecting them, the discharge of legal duties and the enjoyment of their legal rights must be realized in most circumstances through their legal guardian.

478. With the exception of the right to enter Israel, which is guaranteed to citizens and permanent residents, the fundamental rights protected by Basic Law: Human Dignity and Liberty are granted to all persons, regardless of nationality, mental capacity, or any other characteristic.

479. In addition to the above legislative provisions, the recognition of the property rights of married women was specifically articulated in the Women's Equal Rights Law, 1951, as follows: "A married woman shall have full capacity in respect of property and of actions relating thereto as if she were unmarried; and property which she acquired prior to marriage shall not be affected by the marital bond" (sect. 2).

Article 17 - Freedom from arbitrary interference with privacy, family, home

480. The right to privacy was accorded constitutional status in Israel with the enactment in 1992 of Basic Law: Human Dignity and Liberty, section 7 of which provides:

> "(a) All persons have the right to privacy and to the confidentiality of their lives.
>
> "(b) There shall be no entry into the private domain of a person without that person's consent.
>
> "(c) No search shall be conducted in the private domain or on the body of a person, nor in the body or belongings of a person.
>
> "(d) There shall be no violation of the secrecy of the spoken utterances, writings or records of a person."

481. Under the limitation clause in section 8 of the Basic Law, the privacy rights in section 7 may not be impaired except pursuant to a statute which reflects the values of the State of Israel and is intended for a proper purpose, and to an extent no more than necessary. It should be noted that the Basic Law does not define "privacy" as such: it does not set out general minimum conditions for determining when the law will treat a person's actions or utterances as private; nor does it define the boundaries of a person's "private domain", his "home" or his "family" in which the right is realized. Rather, the Basic Law articulates the general right and adds three specific prohibitions, which do not comprise a closed set of situations in which the right to privacy is recognized. The full ambit of the right to privacy, as well the scope of lawful intervention into a person's private domain, is developed in a legal landscape defined by several principal statutory landmarks: the Protection of Privacy Law, 5741-1981, the Secret Monitoring Law, 5739-1979, the Prohibition of Defamation (Prohibition) Law, 5725-1965, and criminal statutes dealing with searches and seizures.

482. **The Protection of Privacy Law**. As with section 7 of Basic Law: Human Dignity and Liberty, mentioned above, the Protection of Privacy Law, 5741-1981, does not define the right to privacy; rather, it defines the following 11 types of violations of privacy which, if done without consent, give rise to criminal and civil liability:

(a) Spying on or trailing a person in a manner likely to harass him, or any other harassment;

(b) Listening-in prohibited under any law;

(c) Photographing a person while he is in the private domain;

(d) Publishing a person's photograph under such circumstances that the publication is likely to humiliate him or bring him into contempt;

(e) Copying or using, without permission from the addressee or writer, the contents of a letter or any other writing not intended for publication, unless the writing is of historical value or 15 years have passed from the time of writing;

(f) Using a person's name, appellation, picture or voice for profit;

(g) Infringing a duty of secrecy determined by law in respect of a person's private affairs;

(h) Infringing a duty of secrecy determined by express or implicit agreement in respect of a person's private affairs (civil liability only);

(i) Using, or passing on to another, information on a person's private affairs otherwise than for the purpose for which it was given;

(j) Publishing or passing on anything obtained by way of an infringement of privacy under paragraphs (a) to (g) or (i);

(k) Publishing any matter relating to a person's intimate life, state of health, or conduct in the private domain.

483. The Protection of Privacy Law, sections 1-2, provides several defences to and exemptions from liability, such as when the invasion was done in good faith in various circumstances,* when it involves a matter of public concern

---

* Section 18 of the Protection of Privacy Law provides as follows:

"18. In any criminal or civil proceeding for infringement of privacy, it shall be a good defence if one of the following is the case:

"(1) the infringement was committed by way of a publication protected under section 13 of the Defamation (Protection) Law, 5725-1965;

"(2) the defendant or accused committed the infringement in good faith in any of the following circumstances:

(a) he did not know and need not have known that an infringement of privacy might occur;

(b) the infringement was committed in circumstances in which the infringer was under a legal, moral, social or professional obligation to commit it;

(c) the infringement was committed in defence of a legitimate personal interest of the infringer;

(d) the infringement was committed in the lawful pursuit of the infringer's occupation and in the ordinary course of his work, so long as it was not committed by way of publication;

(e) the infringement was committed by way of taking a photograph, or of publishing a photograph taken, in the public domain, and the injured party appears in it accidentally;

(f) the infringement was committed by way of a publication protected under paragraphs (4) to (11) of section 15 of the Defamation (Prohibition) Law, 5725-1965;

"(3) the infringement involved a public interest justifying it in the circumstances of the case, provided that, if the infringement was committed by way of publication, the publication was not untruthful."

Section 19 of the Law, entitled "Exemption", provides:

"19. (a) No person shall bear responsibility under this Law foran act which he is empowered to do by law.

which justifies the invasion of privacy, an interference deemed trivial, or an invasion of privacy by security authorities reasonably committed in the proper course of fulfilling their duties (ibid., sects. 6, 18). In the latter case, a "reasonable" invasion of privacy by security authorities is deemed to require a balancing, in the circumstances of each instance, between the right to privacy and the end for which the information in question is sought.

484. The applicability of the defences in section 18(2) of the Law to the activity of private investigators has generated a certain amount of controversy in Israeli courts. For example, the District Courts are divided on the question whether a private investigator who photographs a married woman in a hotel room in an intimate situation with her lover, for use by her husband in a judicial proceeding, is liable for invasion of privacy. One decision of the Jerusalem District Court has held that the investigator would have a valid defence in such circumstances, because he was acting on behalf of the husband, who had a legitimate interest in proving the fact of his wife's infidelity in the context of the judicial proceeding (S.A. (J-m) 31/92, *Frisch v. Private Investigators Disciplinary Committee*, P.M. 5752(2), p. 508). Two more recent decisions, however, have reached the opposite conclusion, based on a balancing of the right to privacy against the public interest in bringing of evidence before judicial instances (Cr.F. 4593/93, *State of Israel v. Hatoukha et al.* (Tel-Aviv Magistrates' Court, unpublished); S.A. (J-m) 628/92, *Disciplinary Committee under the Private Investigators Law ex rel. Attorney General v. Frisch*). In the aftermath of these conflicting decisions, a committee was established to review the existing defences to invasion of privacy and to recommend possible changes.

485. Any material obtained through an infringement of privacy under the Law is inadmissible as evidence in a court proceeding without the victim's consent, unless the court allows use of the material for reasons which it records, or, of course, unless the infringer is a party to the judicial proceeding and can claim a valid defence or exemption under the Law (Protection of Privacy Law, sect. 32).

486. Civil or criminal liability for infringements of privacy which are published in a newspaper may be imposed not only on the person who brought the information to the newspaper, but also the editor, the person who actually

---

"(b) A security authority or a person employed by it or acting on its behalf shall bear no responsibility under this Law for an infringement reasonably committed within the scope of its or his functions and for the purpose of carrying them out.

"(c) For the purposes of this section, 'security authority' means any of the following:

"(1) the Israel Police;

"(2) the Intelligence Branch of the General Staff, and the Military Police, of the Israel Defence Forces;

"(3) the General Security Service."

decided on publishing the damaging information, and the publisher. For other types of published material, civil and criminal liability may be extended to the printer and distributor (ibid., sects. 30-31).

487. Recent amendments to the Protection of Privacy Law, which regulate the dissemination of personal information held by public authorities or in databases, as well as direct mail, are discussed below.

Search and seizure in criminal proceedings

488. In the past, Israel Police personnel had the authority, as part of their powers of arrest and detention, to carry out a search of a person's body. This power was used, among others, by Prison Service officials to carry out searches inside the body to obtain concealed evidence, such as the use of an enema to find narcotics. In a landmark decision in 1979, the Supreme Court ruled that absent the consent of the person being searched, the power to carry out bodily searches extended only to searches on a person's body, and not to any intervention into the body itself. H.C.J. 375/79, *Katalan v. Prisons Service*, 34(3) P.D. 294.

489. In March 1996, the Knesset enacted a new statute which deals specifically with searches of a person's body. The Criminal Procedure (Enforcement Powers - Search of a Suspect's Body) Law, 5756-1996, defines precisely which actions constitute external or internal searches of a person's body, and prescribes exacting procedural requirements for allowing and carrying out such searches.* Only those types of "internal" and "external" searches specifically contemplated by the Law may be performed, and then only under the circumstances prescribed in the Law. The closed set of "internal" searches includes a blood test, internal imaging of the body by ultrasound, x-ray or scanner instruments, and gynaecological examinations, including removal of substances (ibid., sect. 1). Prior to carrying out any search, the person must be asked if he or she consents. "External" searches may be performed even if the suspect refuses to give his or her consent, subject to several procedural requirements.** If, on the other hand, the suspect refuses

---

* An "external search" is defined by the new law as one of the following: frontal examination, including a photograph, of a person's naked body; taking an imprint of any part of the body; removing a substance from underneath the fingernails or from the nostrils; removing hair, including roots; removing material found on the surface of the skin; examination of skin; urine or saliva samples, breath analysis; removing cells from the internal part of the cheek. Criminal Procedure (Enforcement Powers - Search of a Suspect's Body) Law, sect. 1.

** For example, a police captain must give written approval for the external search, must give the suspect an opportunity to explain his or her refusal, and must explain to the suspect the manner in which the search will be carried out, and the fact that a refusal to undergo the search may have incriminating evidentiary weight if the suspect is ultimately tried. A doctor must confirm, after examining the suspect, that there is no health-related impediment to carrying out the search. In addition, even external searches generally must be done by a person of the same sex as the suspect, and must not be done in the presence of others if it involves exposure of any bodily parts that normally are not exposed (ibid., sects. 2-5).

to undergo one of the "internal" searches contemplated by the law, then the law enforcement authority must receive permission from the Court to undertake the search. The Court will not grant a permit if there is an alternative, less invasive way to accomplish the purpose of the search.

490. Under the new Law, the refusal by a suspect to undergo an internal body search of the types permitted in the Law can add incriminating weight to the prosecution's evidence, if the search is not undertaken because of the suspect's refusal. No such evidentiary effect will obtain if the police did not request a permit for an internal search (unless the police do not do so because the delay involved in getting a court permit will likely harm the evidence), or if the court did not issue a permit for an internal search upon request, or if necessary medical approval is not given for an internal search. Refusal by a person suspected of an offence involving dangerous drugs (not including personal use) or offences involving severe violence to undergo an internal search when the Court issued a permit to do so, or to undergo an external search in a manner preventing the police from carrying out the search reasonably, is liable to two years' imprisonment.

491. The powers given to police personnel under the new Law, and the procedures it sets out for bodily searches, apply in substantial part to searches by prison wardens, certain customs inspectors, and military policemen (sects. 17, 18, and 22 of the Law).

492. **Search of a person's home**. The Israel Police may carry out a search in a person's private domain, including in his or her home, in two overarching sets of circumstances: to prevent the imminent commission of a crime, when the police officer has a reasonable suspicion that a crime is being committed, or has just been committed, in a particular place; and to secure evidence which cannot otherwise be obtained in the course of a criminal investigation. A search warrant from a court is necessary only in the latter case. Motions for warrants are typically heard *ex parte*, and routinely granted.

493. A person's home may also be searched without his consent in the context of proceedings to collect a civil debt through the Execution Office. Specially appointed deputies of the Execution Office may enter into a judgement debtor's home or yard to find movable property and other assets which may be garnished to ensure repayment of the debt. In certain circumstances, they may also enter the home or personal domain of third parties who have movable property owned by or owing to the debtor. To carry out such a garnishment order, the court deputies have the right to use reasonable force, including to break the locks on doors (Execution Law, 5727-1967, sect. 22).

Electronic surveillance: wiretapping and eavesdropping

494. The Knesset has recognized that personal privacy can be seriously infringed through the use of electronic devices to track the movement of persons or things and to intercept private communications. Some forms of surveillance are dealt with by the Protection of Privacy Law discussed above. The Secret Monitoring Law, 5739-1979, was enacted for two principal purposes: on the one hand, to protect the individual against invasion of privacy by preventing private or unregulated eavesdropping into his or her personal

communication without his knowledge, by listening in on the telephone or other telecommunications instruments, or by placing a microphone near that person, and by setting strict criminal penalties for illegal eavesdropping. At the same time, the Law establishes procedural requirements for eavesdropping by certain official authorities for purposes of State security or prevention of crime and apprehension of offenders.

495. The Law defines eavesdropping as any listening in, recording or copying of a conversation or electronic transmission of information, by mechanical means, without the consent of either party to the conversation or either the sender or receiver of the transmission. The types of transmissions covered by the Law have recently been broadened to adjust to technological developments, and now include cellular telephones, wireless communications, facsimile, telex, teleprinter or communications between computers (Secret Monitoring Law, sect. 1).

496. **Eavesdropping by the Israel Police**. The Law empowers the Israel Police to carry out eavesdropping for the purpose of preventing crime or apprehending offenders, after having received a permit from the President of the District Court. Such permits are valid for up to three months, and may be extended (ibid., sect. 6). In deciding whether to grant the permit, the judge must consider the degree of invasion of privacy entailed by the type of eavesdropping requested. Refusal by the court to issue a permit may be appealed to the Supreme Court by the Attorney-General. The Inspector General of the Police must file a monthly report to the Attorney-General regarding the eavesdropping permits issued under the Law, and the terms of those permits (ibid.). The number of wiretap permits given to the Police has averaged roughly 1,000 - 1,100 annually over the last several years. Roughly half of these wiretap permits are given in connection with drug-related offences.

497. The Inspector General of the Police may authorize a wiretap for up to 48 hours if he deems that it is urgently necessary to prevent a crime or apprehend offenders and that it is not possible to receive a permit quickly enough in the circumstances. In such cases, the Inspector General must notify the Attorney-General immediately regarding the issuing of the permit, and the Attorney-General may cancel it at his discretion.

498. In the annual report published by the State Comptroller in 1991, police practices relating to eavesdropping were critically reviewed. Among other things, the Comptroller's report found that wiretap permits were not always used according to their strict terms, as the Police had tended to record all conversations made on a particular telephone line, not merely those made by the particular person with regard to whom the permit was granted. The report further found a lack of oversight regarding the volume of wiretap requests and permits, the number of arrests, indictments and convictions made as a result of the wiretaps, and the number of persons or telephone lines involved. To respond to these problems, the Secret Monitoring Law was amended in 1995 to tighten the scope of and procedures for police wiretap permits. New internal police directives require the approval of a senior police official to apply for a wiretap. In addition, the Law requires an annual report by the Inspector General of the Police to the Constitution, Law and Justice

Committee of the Knesset regarding the number of requests and permits in the reporting period, as well as the number of persons, telephone lines and telecommunications devices covered by the permits.

499. **General Security Service**. The heads of the General Security Service and of Military Intelligence may authorize eavesdropping to protect national security, upon approval of their written request by the Prime Minister or the Minister of Defence. As with police wiretaps, security-related permits are valid for up to three months, but may be renewed. In urgent circumstances, the head of the security apparatus involved may authorize a wiretap for up to 48 hours (ibid., sects. 4-5). Under the 1995 amendment to the Law, the Prime Minister or Defence Minister may also authorize a wiretap of employees in the defence establishment in order to prevent leaking of sensitive security information. The 1995 amendment also requires the GSS to present an annual report regarding its surveillance activity to a "mixed committee" composed of the Knesset Defence and Foreign Affairs Committee and the Constitution, Law and Justice Committee. The report is presented in closed-door session.

500. In addition to wiretapping by the above authorities, the Law allows the Chief Military Censor to eavesdrop on international conversations to or from Israel for purposes of censorship; internal eavesdropping on police or military communications systems; listening-in by properly authorized personnel to ensure proper functioning of telecommunications lines; and amateur radio frequencies (ibid., sect. 8). Conversations heard in the public domain do not require a permit if the eavesdropping is done by properly authorized police or security personnel for the specific purposes contemplated by the law, or if a person is openly making a recording in good faith for purposes of publication or research.

501. Except for the exemptions noted above, any electronic eavesdropping without a permit is a criminal offence, as is the wilful, unauthorized use or disclosure of any information obtained by electronic eavesdropping, even if the eavesdropping itself was legal. It is also an offence to install any instrument for use in unlawful eavesdropping. Despite the threat of criminal liability, unauthorized wiretapping and eavesdropping have unfortunately become quite common in Israel. Much of the illegal activity is performed by private investigators for their clients, in the context of marital conflicts, or for commercial and political espionage. Over the past several years a significant number of complaints have been filed with the Police by politicians and members of the media regarding suspicion that their conversations are being tapped. Of particular note is the uncovering of large-scale wiretapping of journalists at Israel's two major daily newspapers, *Yediot Ahronot* and *Ma'ariv*, allegedly at the behest of the editors-in-chief of the two newspapers, who were indicted along with other persons in 1995, and some of whom were recently convicted.

502. **Amendment of the Secret Monitoring Law**. The sweeping amendment of the Secret Monitoring Law in 1995, noted above, attempts to address the burgeoning phenomenon of unauthorized surveillance. Among other things, the amendment increased the maximum sentence for violations of the law from three years' imprisonment to five, and provided for cancelling the professional licence of a private investigator convicted under the Law. The definition of eavesdropping was extended to include newer telecommunications media such as

facsimile, computers, and satellite transmissions. The standards for admissibility of evidence was loosened somewhat: whereas the Law formerly imposed an absolute prohibition on the use of evidence obtained by an illegal wiretap, it now allows the use of such evidence in certain exceptional circumstances when the evidence is sought for use in a trial, or, in the case of the Police, for the investigation of a serious felony carrying a sentence of at least seven years' imprisonment. The Attorney-General, the State Attorney, or, in military court proceedings, the Military Advocate General, must give prior approval of all requests to submit such evidence to the court. On the other hand, if the eavesdropping is performed unlawfully by a person who is otherwise entitled to request a permit, then evidence obtained thereby may be used in a trial for a serious felony only if the eavesdropping was done by mistake and in good faith, with presumed legal authority. In either case, the court, to admit such wiretap evidence, must show why the need to uncover the truth should prevail over the right to privacy in the circumstances of the case. Lawfully obtained eavesdropping evidence, on the other hand, may be used in any criminal proceeding (ibid., sect. 13).

503. Another significant change under the 1995 amendment allows for eavesdropping by police or security personnel on privileged communications between a person and his lawyer, psychologist, doctor or member of clergy, which hitherto had been forbidden. Under current law, the President of the District Court may permit a recording or other surveillance of such privileged conversations if he or she is convinced that there is a reasonable suspicion that the lawyer, psychologist, doctor or clergy member is personally involved in murder, manslaughter, a drug transaction or a felony involving damage to State security, and that the wiretap is necessary or essential for preventing or investigating the offence (ibid., sect. 9 A (a)).

504. **Correspondence**. The term "correspondence" may be deemed today to include communication by facsimile and electronic mail no less than sending of letters and other articles by post. Electronic correspondence is regulated for the most part by the Clandestine Listening Law, discussed above.

505. Under Regulation 89 of the Mandatory Defence (Emergency) Regulations, 1945, the Postal and Telegraph Censor, which operates as a civil department within the Ministry of Defence, has the power to open any postal articles and inspect them in order to prevent harm to State security, to public safety or public order.

Protection of personal information in databases

506. The State of Israel has recognized the need to regulate the use of personal information contained in private and public databases. One part of the Protection of Privacy Law deals with protection of personal privacy in databases. All databases not exempted from the purview of the Law must be registered in a central registry. Under section 7 of the Law, a "database" is defined to include any computerized compilation (not including private personal computers) of information on the personality, personal status, intimate affairs, state of health, economic position, vocational qualifications, opinions and beliefs of a person. However, the Law does not require registration of personal databases containing less than 10,000 names; databases containing only information previously published or made available

to the public; or databases in which the information was given by the persons listed therein by consent and which is not used for direct mailings. Compilations that include only a person's name, address and means of establishing contact are not regulated, so long as the information in the database does not include anything which, if disclosed, would constitute an invasion of privacy. The Registrar of Databases may refuse to register a database if there are reasonable grounds to believe that it will be used for illegal ends, including the invasion of privacy, or if the database was itself compiled by way of invasion of privacy.

507. The holders or managers of databases bear a statutory duty not to use or send any information on the database except for the purpose for which it was established; to give basic information about the database when approaching persons to ask them to give information about themselves for inclusion in the database; to allow individuals to examine information about themselves which is included in the database and to request corrections of the information; and to maintain security of the information on the database against illegal use, copying or tampering. Certain entities, such as banks, insurance companies, credit rating services, public bodies, and any entity that maintains more than four databases which are owned by more than one party, must appoint a properly qualified person to maintain security of the information on the database. The duty to allow inspection of personal information does not apply to databases compiled by security authorities, including the Israel Police, the Intelligence Branch of the IDF General Staff, the IDF Military Police, the GSS, the Ministry of Defence, certain military industries, and the Mossad, or to those possessed by the Prisons Service or tax authorities. The law also provides that a person may be denied the right to inspect information about him- or herself in a database if considerations of State security or foreign relations so require (ibid., sect. 13).

508. Under a new amendment to the Protection of Privacy Law, which entered into effect in April 1997, any direct marketing activity, by telephone, mail or otherwise, which uses personal information from a database must clearly and prominently note the database from which the personal information was taken, and must notify the recipient of his or her right to be stricken from the database. All persons have the enforceable right to have personal information about them stricken from a database, or to demand that such information not be disseminated, or that it not be sent to particular persons or categories of persons (sect. 17 F of the Law).

509. In practice, the regime created by the Protection of Privacy Law for registration and oversight of databases has thus far been implemented only partially. Approximately 5,200 databases are registered as of submission of this report, which, by all accounts, is far from the actual number of currently existing databases covered by the Law. While the Office of the Registrar of Databases has fairly broad supervisory powers under the Law, a significant increase in budget and personnel has been necessary to help ensure fuller compliance with the law. Recognizing this need for added resources, the Knesset recently amended the law to mandate formation of a "monitoring unit" the size of which "shall fit the monitoring needs". The Registrar must now prepare an annual report for submission to the Constitution, Law and

Justice Committee of the Knesset by the Council for Protection of Privacy, which will describe the enforcement and monitoring activities during the preceding year (sect. 10 A of the Law).

Disclosure of information by public bodies

510. The Protection of Privacy Law also creates arrangements regarding sharing of personal information by various public bodies. As a general matter, public bodies may not disclose personal information to other public bodies unless such information was already lawfully published or made available to public inspection, or the person involved consents. The Law grants an exemption to security authorities, which may receive or disclose personal information in order to fulfil their functions, so long as such disclosure is not otherwise prohibited (sect. 23 B of the Law). In addition, public bodies may share information if it is deemed necessary to carrying out their functions or compliance with the Law. If the sender of the information is not a ministry or other national official institution - for example, a municipal authority or government corporation - then the transfer of information must itself be properly within the powers and function of that institution. The exemption for non-security-related public bodies does not apply if the personal information was originally given to them on condition that it would not be disclosed.

511. Public bodies cannot disclose personal information from their databases to private entities.

512. **Information regarding criminal record**. The Israel Police maintains two types of databases regarding criminal records. The first, called the "criminal register", includes information on criminal convictions and sentences, decisions of unfitness to stand trial due to mental illness or disability, and other punishments and court orders connected with criminal proceedings (Criminal Register and Rehabilitation Law, 5741-1981, sect. 2). The GSS, the Military Police, and the Field-Security Department of the IDF, as well as the Israel Police, have direct access to this database, and are empowered to pass on information from it to 30 different government bodies for which information on a person's criminal record may be relevant in carrying out their functions. These 30 bodies also may receive information on criminal files still pending against a person.

513. The Police also maintains records of a range of other information regarding criminal proceedings which are not included in the "criminal register". Information regarding decisions not to investigate or to indict a person - for example due to lack of evidence, lack of guilt, or lack of a public interest in prosecution - or of a decision to suspend criminal proceedings, may be disclosed only to the Attorney-General or his deputies, a parole officer, a scientific researcher, or the security authorities who have direct access to the register. Files closed for "lack of guilt" are stricken from the police register, and the name of the suspect in the file is deleted from computerized databases. In the case of files closed for lack of evidence or public interest, the suspect can apply to the head of the Investigation Division of the Police seven years after closure of the file to strike the file from the register. In general, the Law also provides for prescription of convictions, that is, the period after which information about a person's

conviction may not be disclosed and that person bears no duty to disclose the fact of the conviction; and for striking convictions from the criminal register. The period for prescription varies with the severity of the sentence, and the time for striking the conviction from the register is typically 10 years after the date of prescription (sects. 14-16, 19-20). Once a conviction is stricken from the register, the person is deemed not to have been convicted; any evidence disclosing the fact of a conviction which has thus been stricken from the register shall not be admissible, either in court proceedings or before any public servant or entity, unless disclosed by the person whose conviction has been stricken; and the person bears no duty to answer any questions about the conviction.

Privacy of medical records

514. The recently enacted Patient's Rights Law, 5756-1996, contains provisions ensuring the privacy of medical information and records. Under section 19 of the Law, all medical personnel or employees at a medical institution are obligated to maintain the confidentiality of all information regarding a patient that they learned in the course of carrying out their duties; the attending physician and the director of the institution bear a further duty to ensure that all workers under their authority fulfil their duty of confidentiality.

515. Medical information regarding a patient may be disclosed to third parties only in clearly circumscribed circumstances defined in the Law, such as when the physician or institution bears a legal duty to do so, when the disclosure is necessary for treating the patient, or a statutory ethics committee decides, after hearing the patient's claims, that disclosure of the information is crucial for protecting the health of another person or of the public, and that the need for disclosure outweighs the interest in non-disclosure (Patient's Rights Law, sect. 20). In any case, the disclosure must be to an extent no greater than what is necessary for the matter at hand, and with maximal avoidance of disclosing the identity of the patient (ibid.)

Information protected by professional privilege

516. The law recognizes several types of professional privilege that safeguard information regarding a person that has been communicated to his or her doctor, lawyer, psychologist, social worker or priest. Under the Evidence Ordinance [New Version], 5731-1971 (sect. 48), a lawyer and his or her employees bear no duty to disclose information or documents exchanged between the lawyer and client or a person on behalf of the client as evidence in legal proceedings, so long as that information is related to the matter which the lawyer is handling for the client; the lawyer bears a positive ethical duty not to disclose such information. The attorney-client privilege is deemed to be that of the client, so that if the client waives the privilege, then the lawyer may be obligated to disclose such information in legal proceedings. Physicians, as noted above, bear a statutory obligation to maintain the confidentiality of medical information regarding their patients. In legal proceedings, physicians may be compelled to disclose medical information without the patient's consent if the court decides that the need for

disclosure for the purposes of justice outweighs the interest in maintaining the patient's privacy (sect. 49). A similar privilege applies to psychologists and social workers (sects. 50-50 A). Clergy have a stronger privilege regarding any matter which they are told by a person at confession, so long as applicable religious law forbids disclosure (sect. 51).

Individual freedom of information

517. As of the submission of this report, the Constitution, Law and Justice Committee of the Knesset has completed the preparation of a Freedom of Information Act, and it is expected to be enacted within a few weeks. The bill was introduced by the Government, spurred by a sustained campaign by a coalition of NGOs led by the Public Committee for Freedom of Information. It will allow every person to receive information from public authorities, with an exemption for the release of information that would constitute the invasion of another person's privacy.

Unlawful attacks on honour or reputation

518. The Prohibition of Defamation Law, 5725-1965, imposes both criminal and civil sanctions for defamation, libel or slander. Defamatory matter is defined under section 1 of the Law as "anything the publication of which may -

> "(1) lower a person in the estimation of others - or expose him to hatred, contempt or ridicule on their part;
>
> "(2) bring a person into disrepute because of acts, conduct or qualities attributed to him;
>
> "(3) injure a person in his office, whether it be a public or any other office, or in his business, vocation or profession;
>
> "(4) bring a person into disrepute because of his origin or religion, sex and sexual orientation, race, or place of residence."

519. Publication may be not only by speech or writing, but also by a painting, an effigy, a gesture, or any other means. To constitute a publication, the defamatory matter must be intended for a person other than the injured party, or, if in writing, it must be likely under the circumstances to reach someone other than the injured party. Criminal defamation may be claimed where the defamation was made with intent to injure and is published to two or more persons other than the injured party. To make out a civil claim, the defamatory matter must reach at least one person other than the injured party. Both civil and criminal claims are limited by certain exemptions and defences. The exemptions apply to publications made by official authorities in their capacity as such, or in the proper course of official proceedings, as well as accurate and fair summaries of what was said or occurred at court hearings or before a governmental commission of inquiry.

520. If the defamatory matter was true, and its publication was in the public interest, then the defaming party may claim an affirmative defence to criminal

and civil liability under the statute, provided that the publication did not exceed what was necessary from the standpoint of the particular public interest invoked (sect. 14 of the Law). Another statutory defence to liability is that the publication was made in good faith under any of the following circumstances (sect. 15 of the Law):

"(1) he did not know and need not have known of the existence of the injured party, or of the circumstances which imply defamation or its attribution to the injured party;

"(2) the relations between him and the person to whom the publication was addressed imposed on him a legal, moral or social duty to make the publication;

"(3) the publication was made in order to protect a legitimate personal interest of the accused or defendant, of the person to whom the publication was addressed or of someone in whom that person had a legitimate personal interest;

"(4) the publication was an expression of opinion on the conduct of the injured party in a judicial, official or public capacity, in a public service or in connection with a public matter, or on his character, past actions or opinions as revealed by such conduct;

"(5) the publication was an expression of opinion on the conduct of the injured party -

"(a) as a party, the representative of a party, or a witness, at a public session in a [judicial or quasi-judicial] proceeding ...

"(b) as a person whose case is the subject of an inquiry, as the representative of such a person or as a witness at a public session of a commission of inquiry ...

or on his character, past, actions, or opinions as revealed by such conduct;

"(6) the publication was a criticism of a literary, scientific, artistic or other work which the injured party had published or publicly exhibited, or of an act he had performed in public, or - insofar as pertinent to such a criticism - an expression of opinion on the character, past, actions or opinions of the injured party as revealed in such a work of art;

"(7) the publication was an expression of opinion on the conduct or character of the injured party in a matter in which the accused or defendant was a superior of the injured party, by law or contract, and the publication was justified by his being a superior as aforesaid;

"(8) the publication was a complaint against the injured party in a matter in which a person to whom the complaint is submitted was a

superior of the injured party, by law or contract, or a complaint submitted to an authority competent to receive complaints against the injured party or to investigate the matter which is the subject of the complaint;

"(9) the publication was an accurate and fair report of a public meeting or of any such meeting or session of a body corporate as the public had access to, and the publication was in the public interest;

"(10) the publication was made for the sole purpose of denouncing or denying defamatory matter published previously;

"(11) the publication was merely the delivery of information to the editor of a newspaper in order that he might examine the question of its publication in the newspaper."

521. The Law also establishes statutory presumptions regarding good faith. Among other things, the publication is presumed to have been in bad faith if it is untrue and the writer either did not believe it to be true, or did not take reasonable steps prior to publication to ascertain whether it was true or not; or if the defendant intended to inflict greater injury by the publication than was reasonable in defending the values protected by any of the good faith defences mentioned above.

522. Section 4 of the Defamation Law makes it a criminal offence to defame any group as such. Criminal proceedings may be initiated for "group defamation" only upon the approval of the Attorney-General.

523. The protection of a person from false and defamatory attacks on his honour or reputation is tempered by the fundamental principle of free expression, which entails, among other things, the right to speak and write without fear of civil or criminal liability. As interpreted in judicial decisions, the right of free speech significantly shields persons engaged in critical, even derogatory speech, particularly where that speech concerns a public figure. The balance struck by the Supreme Court between the right to free speech and the right of a public figure to his reputation has evolved over the years. In one landmark case, the Court, reversing on rehearing its own decision in the same case, held that the competing rights hold more or less the same normative weight, but that the importance in a democratic society of scrutinizing the conduct of public officials should not devolve into a "right to slander under the guise of fair comment". and thus a journalist may claim the defence of good faith expression of opinion only if the "factual" and "opinion" parts of an article are clearly separated (F.H. 9/77, *Israel Electric Company et al.* v. *Ha'aretz Newspaper Publishing Co. et al.*, 32(3) P.D. 337). In a later case, the Court held that the free speech principle has greater normative weight, as a general matter, than the right to honour or reputation of a public figure. As J. Barak, reasoned:

"In the public and political realm, it is difficult to sever the link between an opinion and the person who expresses it. Hence the social

> need to allow freedom not only of opinions, but also with regard to officials who serve as their mouthpiece ... Bodies and persons who hold public office or positions in which the public has an interest, take upon themselves by their very position and role certain risks related to attack on their reputation. Of course, this does not justify injuring their reputation, which is their most treasured asset, but it does weaken the weight that ought to be given to this consideration in relation to free expression ... The proper response to defamation is to disclose its falsity, and to bring the truth to light. And it is precisely the public figure who has the wherewithal, the knowledge and the access to the media, and with these he has the capacity - more than a 'private' person - to defend his reputation properly."

Avneri v. Shapira, 43(3) P.D. 840.

Invasion of privacy of the family

524. **Removal of child from parental custody**. As discussed under articles 23 and 24, under the Youth (Care and Supervision) Law, 5722-1962, the courts have the power to intervene in a variety of ways in the parental guardianship of their children, if it believes that a parent cannot adequately care for or supervise the child; if the child's physical or mental health has been or may be harmed for any reason; if the child is found loitering or begging; or if the child lives in a place that is used continually for the commission of crimes. The court, in such circumstances, may order that the child be removed from parental custody if it deems that there is no other way to ensure proper care and supervision. It may also place the child under the supervision of a welfare officer, and require the parents to comply with any directives regarding the child's care, including that the child undergo psychiatric observation or care.

525. **Family violence**. In 1991, the Knesset enacted the Family Violence (Prevention) Law, 5751-1991, which grants the courts broad discretion to grant urgent relief in order to protect persons who have been or may be threatened by violence from other family members. Among other things, the court may issue protective injunctions, under which the person suspected of violence against a family member may be prevented from entering the family home, from coming within a specified distance from it, from coming into contact with family members, or from carrying weapons. Until enactment of the Law, the availability of such an order removing a violent family member from the home was fairly restricted, typically as a subsidiary form of relief in alimony disputes, and only then in limited circumstances.

526. **Family privacy and the law of evidence**. The Evidence Ordinance [New Version], 5731-1971, provides that a spouse, parent or child may not testify in a criminal trial against the spouse, child or parent, respectively (sects. 3-4). Such testimony is admissible, however, in trials for violent crimes, neglect of children, sexual offences within the family, offences against minors and invalids, or obstruction of justice or witness tampering related to any of these offences.

527. Court proceedings in many family-related matters, such as adoption, custody contests between parents and trials of minors, are generally heard in closed-door session.

Reproductive privacy: abortion

528. Until 1977, Mandatory legislation criminalizing abortion remained in force. Current law enables legal abortions at recognized medical institutions, but not without encroaching upon the autonomy and privacy of the pregnant woman. For an abortion to be performed legally in Israel, it must first be approved by a statutory committee composed of three persons, at least one of whom is a specialist in obstetrics and gynaecology and another a registered social worker, and at least one of whom must be a woman. Moreover, under the Penal Law, 5737-1977, only certain specific grounds can justify approving an abortion: if the woman is under the legal age of marriageability or over 40; if the pregnancy is due to relations prohibited by the criminal law, to incest, or to extramarital relations; if the child is likely to have a physical or mental defect; or if continuing the pregnancy is likely to endanger the woman's life or cause her physical or mental harm (Penal Law, 5737-1977, sect. 316).

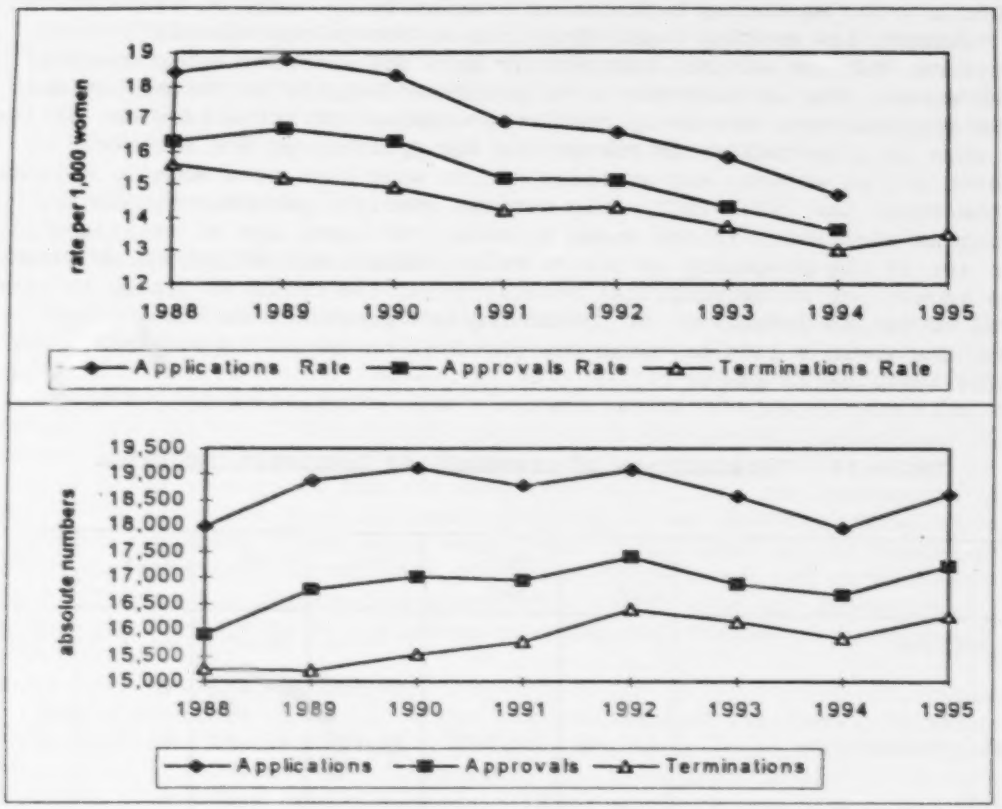
Table 12: Terminations of pregnancy in hospitals, by cause

Year	1980-1983	1987-1988	1990	1993	1994	1995
Applications			19,121	18,568	17,958	18,586
Approvals			17,020	16,855	16,650	17,211
Actual terminations	61,444	30,545[b]	15,509	16,149	15,836	16,244
Article:						
Woman's age	6,827	3,405	1,717	1,778	1,538	1,629
Out-of-wedlock pregnancy	23,301	13,370	6,417	7,063	7,239	7,747
Malformed foetus	9,326	6,203	3,116	2,837	2,779	2,704
Danger to woman's life	21,543	7,498	4,259	4,471	4,280	4,164
Rates per 100 live births	16.1	15.3	15	14.4	13.8	14.2
Percentage of known pregnancies [a]	13.8	13.3	13.1	12.6	12.1	12.4

a/ Live births and terminations of pregnancies

b/ The report of one of the commissions in 1987 was incomplete; 72 procedures are estimated to be missing.

Figure 6: Applications for abortions, approvals, and actual terminations



529. No approval for an abortion is needed other than that of the committee, even if the woman seeking the abortion is a minor. Upon applying to the committee, the woman seeking the abortion must meet with a social worker, who is directed by law to explain the physical and emotional dangers of abortion, and is also instructed by the Ministry of Health to attempt to convince her to choose an alternative solution to the unwanted pregnancy. The woman must also meet with a doctor who explains the medical risks involved. The reports of both the doctor and the social worker must be reviewed by the committee before it makes its decision. The woman must also give her written consent to an abortion after the physical and mental risks have been explained to her.

Table 13: Applications to commissions for termination of pregnancy (1995)

Marital status and religion	Total	To age 19
Absolute numbers		
Total	19,145	2,318
Married women	8,457	105
Unmarried women	6,668	2,193
Religion:		
Jewish	15,305	2,136
Muslim	863	51
Christian	493	13
Rates per 1,000 women		
Total	13.0	10.4
Married women	12.8	9
Unmarried women	13.2	10.5
Religion:		
Jewish	13.5	12.3
Muslim	4.5	
Christian	10.5	

530. Applications for abortion of a pregnancy that has developed beyond the twenty-third week must be reviewed by a special committee, composed of the director of the medical centre to which the application has been sent, the director of the maternity ward, the director of the neonatology ward, the director of a genetics centre, and a chief social worker. Thus far, six such special committees have been formed. It should be noted that a minor may give her consent to an abortion without requiring approval of her parent or representative.

531. Since 1980, the number of legal abortions performed in Israel has fluctuated between an estimated 14,000 to 19,000 per year.

Article 18 - Freedom of religion and conscience

532. The State of Israel was founded as a home for the Jewish people, in which freedom of religious worship and conscience would be guaranteed to members of all faiths. The full fabric of the relationship between religion and State in Israel is quite labyrinthine. History, political expediency, party politics, the lack of a constitution which specifically deals with freedom of religion, and the broad power of the Knesset to legislate in religious matters have resulted in a patchwork of laws and practices that are not easily susceptible to generalization. Although the Declaration of Independence defines Israel as a "Jewish State", and the recent Basic Law: Human Dignity refers to a "Jewish and democratic State", there is no established religion in Israel, properly so-called. Nor, however, does Israel maintain the principle of separation between matters of religion and the institutions of Government. Rather, the law and practice in Israel regarding religious freedom may best be understood as a sort of hybrid between

non-intervention in religious affairs, on the one hand, and on the other hand the interpenetration of religion and Government in several forms, most notably by legislation establishing the jurisdiction of religious courts of the different faiths in specified matters of "personal status"; by government funding of authorities which provide religious services to several of the religious communities; and by a series of legal institutions and practices which apply Jewish religious norms to the Jewish population. While it may be said that Israel has been quite successful in guaranteeing the freedom of religious practice and the use of sites holy to the three monotheistic faiths, particularly for the non-Jewish communities, it is more difficult to claim that "freedom from religion" is fully protected, particularly for the Jewish population.

Historical background: organization of the religious communities

533. The relationship between religion and State in Israel is to a great extent an outgrowth of the regime instituted during the Ottoman period and maintained during the British Mandate. The Ottoman order was grounded in a social structure in which homogeneous religious minority communities existed within a Muslim society. These non-Muslim religious communities, called *millets*, were led by religious dignitaries who were responsible to the Ottoman Government, and generally enjoyed a fairly high degree of independence in managing their communal religious affairs.* Muslim law (Shari'a), which was one of the three branches of the Ottoman legal system, applied to all questions of personal status involving Muslims, including marriage, divorce and succession. The courts of the recognized non-Muslim communities were granted judicial autonomy in matters of personal status for persons who belonged to their community. The jurisdiction of these community courts depended on the scope of rights granted to the community in question, which varied. In general, non-Muslim communities were granted jurisdiction in matters of marriage, divorce and maintenance, as well as the power to regulate their internal affairs, such as education and charitable institutions.

---

* One noteworthy exception in this regard was the Greek Orthodox Patriarchate. Following the death of the reigning Patriarch in the 1870s, internecine conflict surrounding the election of his successor developed into prolonged rioting and violence. To help restore order, the Ottoman Grand Vizier promulgated in 1875 an ordinance, which was actually a lengthy telegram, setting out, among other things, the procedures for electing the new Patriarch. This conflict over succession of a deceased Patriarch repeated itself in the 1930s, during the British Mandate, resulting in two additional Mandatory ordinances regarding the election of the Patriarch and the management of the Greek Orthodox Church. These ordinances have never been repealed or superseded, and thus, somewhat anomalously, remain part of the law of the State of Israel. L.C.A. 688/91, *S.B.C. Establishment Inc. et al. v. Greek Orthodox Patriarch of Jerusalem* (Takdin - S.Ct. 91 (2), p. 2,797 (non-compliance with Ottoman and Mandatory ordinances regarding election of the Greek Patriarch may be grounds for disqualifying the Patriarch as a proper party in a lawsuit).

Certain communities also had jurisdiction in matters of succession. Ottoman law did not apply to foreign nationals who were subject to the consular courts.

534. The British Mandatory authorities adopted the Ottoman system and kept it largely intact: the applicable law in matters of personal status was the religious law of the community to which the individual belonged, and jurisdiction lay with the religious courts of that community.* Muslim courts were given jurisdiction with regard to those foreign nationals whose national law made them subject to Muslim religious jurisdiction, as was the case under the Ottoman system. Matters of personal status affecting all other foreign nationals were handed over to the newly established District Courts, unless the foreign national consented to the jurisdiction of a religious court.

535. One of the principal problems of the Ottoman-Mandatory system was that it largely did not provide for persons who belonged to none of the recognized communities, either because they espoused no religion or disavowed the one into which they were born, or their religion was not practised in the country, or their religion was practised but their community not officially recognized. Such persons were deprived, among other things, of the right to marry unless they adopted the religion of a recognized religious community.**

536. Following the establishment of the State of Israel, the Knesset maintained the three underlying principles of the status quo: religious law in matters of personal status, communal jurisdiction and preferential treatment of foreign nationals. As discussed in more detail below, the principal change that occurred following independence was the subsuming of Jewish communal religious institutions into official State bodies, with authority over the entire Jewish population, and the piecemeal enactment into legislation of certain religious practices under Jewish religious law (*Halakha*). Three additional religious communities have been recognized - the Druze (in 1957), the Evangelical Episcopal Church (in 1970) and the Baha'i faith (in 1971). Several other religious communities are not officially

---

* Under the British Mandate, the recognized communities included the Eastern (Orthodox), Latin (Catholic), Gregorian Armenian, Armenian Catholic, Syrian (Catholic), Chaldean (Uniate), Greek Catholic Melkite, Maronite, Syrian Orthodox, and Jewish (Knesset Israel). Palestine Order in Council, 1922, as amended in 1939, Second Schedule. As under the Ottoman system, the Muslim population was not defined as a "recognized community"; this difference in appellation did not impair the power of Muslim courts to rule in matters of personal status involving Muslims.

** The British Government made an initial attempt to deal with this problem in 1939 by adding article 65 A to the Palestine Order in Council, under which "provision may be made by ordinance for the celebration, dissolution and annulment of marriages of persons neither of whom is a Muslim or a member of a religious community and for the granting by the courts of orders or decrees in connection with the marriages of such persons, their dissolution or annulment." No implementing legislation, however, was ever enacted by the Mandatory authorities.

recognized - Anglicans, the Church of Scotland, Lutherans, Unitarians, Baptists, Quakers and others - and thus no local religious tribunal has jurisdiction over their members in matters of personal status. This lack of official recognition does not affect the ability of these communities to practise their religion freely or to maintain communal institutions. In certain ways these smaller, unrecognized communities are freer for their lack of official status, not being subject to regulation in any matter relating to religious practice or law. The principal consequence of non-recognition is that they do not receive government funding for their religious services, as do many of the recognized communities. Their institutions do, however, receive various tax benefits and exemptions.

537. **The Muslim community**. During the Mandatory period, the Supreme Council for Muslim Religious Affairs was established to manage Muslim matters, including the control of *wakf* affairs (*wakf*: property, including religious sites, held in trust for the benefit of the Muslim community or individuals) and Muslim courts. The members of the Supreme Council were initially elected, and then for a brief period were appointed by the British High Commissioner. Following a period of violent unrest in 1936-37, *wakf* matters were removed from the control of the Council and transferred to a special committee appointed under the Mandatory Defence Regulations (Muslim Charities), 1937. Upon the establishment of the State, the Supreme Council and the special committee ceased to function and the Muslim community was left without a religious organ or communal religious institutions.

538. The Muslim religious courts were re-established by legislation in 1961. These courts have exclusive jurisdiction in matters of personal status over all Muslims, including foreign nationals who are subject to the jurisdiction of Shari'a courts under their national law. In fact, the scope of powers of the Shari'a courts is broader than all other religious courts in Israel, a vestige from the Ottoman and Mandatory periods. As organs of the State, the Muslim courts are funded through the Ministry for Religious Affairs; its judges (kadi) are State employees, appointed by the President of the State upon the nomination of a nine-member committee which parallels the selection committee for judges in the rabbinical and civil courts. The terms of office for kadi mirror those of judges in the other court systems, and are similarly aimed at ensuring judicial independence.* In matters of personal status, the Shari'a courts apply Muslim law as consolidated in the Ottoman Law of Family Rights of 1917, with modifications deriving from Israeli legislation in specific matters. While the Shari'a courts enjoy substantive independence in deciding the cases before them, they may be said to suffer from two principal problems. First, the law does not require that kadis have legal training, or any minimum level of education, as a condition for appointment, resulting in a bench of uneven quality. In addition, the Muslim religious court system has not received adequate government funding to maintain an efficient level of judicial administration. Efforts to remedy these problems are discussed below.

---

* Terms of judicial tenure, and judicial independence generally, are discussed under article 14 above.

539. The Israeli Government, which assumed the powers of the British High Commissioner under the 1937 regulations mentioned above, has not used its powers to reconstitute the special committee for management of *wakf* affairs. Rather, under the Absentees' Property (Amendment No. 3)(Release of Charity Property and its Use) Law, 5725-1965, ownership of *wakf* property has passed to the Custodian of Absentee Property. The Law requires the setting up of a committee of trustees for each of the Muslim communities in Tel-Aviv-Jaffa, Ramle, Lod, Haifa, Acre, Nazareth and Shfar'am. These committees are not elected, but appointed by the Government. The law empowers the Custodian to release *wakf* property and to transfer it to the trustee committees, which are directed by the Law to manage the property and use its income on behalf of the Muslim population for educational grants, professional training, health, religious studies, maintenance of religious rites or customs, aid to the poor, and other purposes sanctioned by the Government. The income from *wakf* property not transferred to the trustee committees must nevertheless be used only for the above purposes. *Wakf* properties in Jerusalem - including the Temple Mount, holy to Muslims and Jews alike - are not subject to the above arrangement. Rather, they continue to be managed by the Jerusalem *wakf* committee, which was appointed by the Jordanian Government until the formation of the Palestinian Authority.

540. Apart from the Jerusalem *wakf*, religious services in the Muslim community are generally maintained and funded locally by residents of the towns and villages, with some funding from the Government, which pays the salaries of the prayer caller (muezzin) and clerical leader in many towns, and also distributes funds for repair and maintenance of mosques, graveyards and other sites of religious import.

541. **The Christian communities**. Compared to the other religious communities in Israel, the Christian communities maintain the highest degree of independence in managing their affairs. With the exception of the Greek Orthodox Patriarchate, as discussed above, the 10 recognized Christian communities have no statutory provisions regulating their internal constitution, as none of them has applied either to the British High Commissioner or to the Israeli Government, under the Religious Communities Ordinance, for confirmation of their rules of organization. However, religious marriages between Protestants, whose communities have not been "recognized", are celebrated, registered and recognized by the relevant government agencies. While the judgements of the religious courts of the recognized communities have the same status and force as any judgement issued by the civil courts, the organization and activity of the Christian courts - unlike their Muslim and Druze counterparts - are not provided for in Israeli legislation, but are wholly an internal matter for each Church. Some of the Christian communities in Israel are controlled and directed by their higher religious authorities in Arab countries; the Government has consistently maintained a policy of not intervening in such control, and allows visits by religious figures across the border to enable these communities to manage their affairs.

542. The Christian communities receive a minimal amount of funding from the Government for repair and maintenance of churches, graveyards and other religious sites.

543. **The Druze community**. In 1957 the Druze community applied for and received recognition as a religious community from the Minister for Religious Affairs. The community is headed by a Religious Council appointed by the Minister for Religious Affairs, and has its own system of religious courts, established under the Druze Religious Courts Law, 1962. These courts have exclusive jurisdiction in matters of marriage and divorce of Druze, as well as in matters relating to the creation and administration of Druze religious trust charities. In other matters of personal status, the Druze courts have jurisdiction by consent of the parties. The Government has undertaken recently to increase significantly the amount of funding directed towards religious services for the Druze community. In 1997, the total amount of funding will reach approximately NIS 8 million ($2.4 million), as part of a much larger funding programme for the Druze and Circassian communities generally, which is discussed under article 27.

Funding of non-Jewish religious services

544. In comparison with funding of Jewish religious institutions, the non-Jewish communities are rather severely undersupported by the Government.

Table 14. Funding of religious services to non-Jewish and Jewish sectarian communities (in thousands of shekels), 1994-1996

Type of funding	1994	1995	1996
Religious courts	3 200	4 757	5 006
		640 a/	640
Development of religious sites	824	2 300	6 920
Muslim religious services	10 200	11 733	14 221
Druze religious services	158	308	1 056
Christian religious services	357	652	1 083
Samaritan religious services	33	50	52
Karaite religious services	469	698	727

a/ In 1995 and 1996 an extra NIS 640,000 were added to the operating budget of the religious courts for computerization and rental fees.

545. The problem of underfunding has perhaps been greatest in the Muslim and Druze communities, for two reasons: their religious courts are State organs, and thus rely on Government funding for their operation, and, unlike most of the recognized Christian communities, they do not receive substantial support from a central religious organ, either abroad or within Israel. The Ministry of Religious Affairs has recognized the need to improve the level of funding

for religious matters to the non-Jewish communities. In August 1995, the Ministry published a detailed plan, entitled "One Law", which set out to achieve gradual equality in the services given to the non-Jewish and Jewish communities, both by substantial increases in funding and by institutional reforms. For the Muslim community, the plan includes, among other things, the establishment of a national Muslim Religious Council, improvement of terms of employment of Muslim clergy who are employed by the State, substantial increases in funding to Muslim holy places, establishment of an organization that would handle all matters relating to the annual pilgrimage to Mecca (haj) by Muslim Israeli citizens, establishment of a centre for development of religious services and structures for the Muslim community, improvement of physical plant and computerization of the Shari'a courts, adding more kadi positions, establishment of a code of ethics for kadis, and an amendment of the Kadis Law, 5721-1961 to require legal or other academic training as a minimum requirement for appointment of kadis. For the Druze community, the plan included the addition of two kadis, one of whom would serve as the director of the Druze religious courts, finding new quarters for the Druze courts and computerizing them, and establishing a Druze religious council which would manage the religious affairs of the Druze in Israel. For the Christian communities, the plan included the participation of the Ministry for Religious Affairs in the cost of repairing certain Christian holy sites, churches and graveyards. The recommendations of the above plan have been implemented only partially. Funding for religious services to the Muslim and Druze communities has been increased, some 50 new positions have been filled for clergy and administrative staff, and the budget for repair of religious buildings has also been augmented. In particular, the allocations of the Ministry of Religious Affairs for development of religious sites and buildings in the Druze and Circassian communities were increased from NIS 910,500 (approx. $300,000) in 1995 to NIS 7.7 million (approx. $2.41 million) in 1996, and a projected NIS 8.4 million (approx. $2.5 million) in 1997.* The recommendations regarding institutional and legal reform, however, have not yet been implemented as of the submission of this report.

Jewish religious institutions and the State

546. To understand the degree to which Israel implements its obligation under this article with regard to the Jewish population, it is necessary first to delineate some of the main features of the complicated institutional and legal context in which Jewish religious law operates in a "Jewish and democratic" State.

547. Judaism has always been at once a religious doctrine and way of life, a race, a nation *(am yisrael)*, a shared culture and history. Until the modern era, virtually the entire Jewish people lived according to the precepts of Jewish religious law (*Halakha*) which encompasses not only a religious

---

* The Circassian community, which is grouped together with the Druze community for administrative purposes, essentially consists of one town, Kfar Kama, which received NIS 500,000 in funding from the Ministry of Religious Affairs in 1996, and a significant portion of the population of another town, Rehania.

doctrine and form of worship, but a comprehensive body of binding laws extending to every area of private, religious and civic life. Religious life took place within traditional communities in the various countries to which the Jewish people were dispersed, and these communities had clerical institutions with effective power to interpret and enforce compliance with the religious law. Within this self-contained legal and social system, certain secular laws promulgated by the gentile rulers in places where Jewish communities dwelled were recognized as binding in various degrees. While throughout its history Judaism has been witness to heterodox doctrinal factions, such as the pre-Paulian Christians, the Essenes, and the seventeenth century Sabbatean movement, and to differences of religious doctrine within the mainstream communities, it has been primarily over the last 250 years that Jews around the world have developed a spectrum of approaches to religious practice, ranging from total non-observance to complete observance of *Halakhic* law. In the West, the Reform, Conservative and Reconstructionist movements emerged as voluntary alternatives to orthodox religious practice. For most of the twentieth century, and especially following the annihilation of European Jewish communities during the Second World War, the vast majority of the world Jewish population has not been orthodox in religious practice.

548. In the land of Israel, even prior to the establishment of the State, the lack of a complete overlap between Judaism as a people and as a religion has taken on a more pronounced, political cast than elsewhere. Although Zionism as an ideology and political movement had deep roots in the Jewish tradition, in which the return to the Holy Land and re-establishment of the ancient religious order has held a central eschatological role, Zionism was in practice largely a non-religious movement, with a minority of religiously observant members; in the eyes of many of its adherents, moreover, it was viewed explicitly as an alternative path of collective self-realization to the rigorously observant life of Jewish communities in the Diaspora. This dominant strand of Zionism sought to create a homeland for the Jewish people as a whole, regardless of their level of religious observance. On the other hand, the orthodox Jewish communities viewed the establishment of a Jewish homeland through the prism of the religious tradition, in which it was clear that the comprehensive system of *Halakha*, emanating under orthodox doctrine from divine revelation at Mount Sinai, would be the law of the land. In scholarly debates through the centuries, the notion of a Jewish Government in the land of Israel based upon a secular outlook was never even considered. See, e.g., Maimonides, *Law of Stolen and Lost Things*, V 11; Maimonides, *Commentary on the Mishna, Nedarim* 27 b. Thus, the emergence of a largely secular Zionist movement and the establishment of a Jewish State based on secular laws which are to a great extent inconsistent with *Halakha* set two legal orders against one another, each demanding primacy. Some segments of the orthodox community do not recognize the legitimacy of the State's secular institutions, preferring, for example, to bring their disputes before rabbinical tribunals rather than the civil courts. At the same time, religious political parties have been represented in every Knesset since the establishment of the State - they comprise roughly one fifth of the current Knesset - and take a substantial role in the administration of Government at all levels. The religious parties work through the political and legislative processes to further the adoption of Jewish religious law as the law of the land, or at least the law that binds the Jewish population, in a variety of

areas. Most of the observant community, however, as well as the State itself, have attempted to accommodate the two competing systems of law within a democratic framework.

549. The nature of the accommodation between Jewish religious law and the institutions of the secular State is based upon the following principles:

(a) As it does with regard to the other recognized religious communities, the State recognizes the jurisdiction of the Rabbinical Courts over all Jewish citizens and residents (not only those who were voluntary members of the community, as during the Mandatory period) in matters of personal status, including exclusive jurisdiction over matters of marriage and divorce. These courts decide according to the precepts of *Halakha*;

(b) In certain other matters of personal status the provisions of *Halakha* are binding and are applied even in the civil courts;

(c) The State confers powers upon the Chief Rabbinate, which is organized under law and supported by State funds;

(d) At the local level, the State confers powers on religious councils, which are similarly organized under law and funded in part by the State;

(e) The State attends to religious education, and there is a network of State religious schools in addition to the State non-religious schools and independent religious school systems, which also receive government funding in many cases;

(f) The Ministry of Religious Affairs may use part of its budget for the religious needs of the Jewish community, as it may do for other religious communities, and the Minister may enact regulations with a religious purpose if so authorized by the Knesset;

(g) The Knesset has enacted laws with a religious background regarding the Sabbath and Jewish holidays, dietary laws, and other matters;

(h) The Israel Defence Forces has a chaplaincy, and applies Jewish dietary laws to the entire army;

(i) The actions of all State institutions that act in the religious sphere - both government offices and organizations operating under colour of Knesset legislation - are subject to review by the High Court of Justice, including in matters related to the application of religious law;

(j) The provisions of certain secular laws, such as regarding equal rights for women, adoption of children and spousal property relations, are binding on the religious as well as the civil courts. According to Supreme Court precedents, a judgement of a religious court contrary to such secular provisions of law is in excess of its jurisdiction. (See H.C.J. 202/57, *Sidis* v. *President of Supreme Rabbinical Court*, 12 P.D. 1528.)

550. As discussed in more detail below, these arrangements are not always easily reconciled with the broad principle of religious freedom. While it should be emphasized that the State protects the freedom of Jews and non-Jews alike to engage in their chosen form of religious practice or worship, and that in most cases the application of religious precepts by institutions of the State, such as in the prohibition of work on religious days of rest, does not compel Jews or non-Jews to violate the precepts of their chosen faith, it remains the case that some religious norms - primarily in matters of personal status, such as marriage, divorce, conversion and burial - are applied in a manner that infringes upon the right of persons not to be bound by religious laws which they do not espouse. In addition, the non-orthodox Jewish communities have had to struggle to attain a level of recognition equal to that of the orthodox communities in matters of worship and religious authority.

Legal sources guaranteeing religious freedom

551. Article 83 of the Palestine Order in Council, 1922, enacted during the Mandatory period, provides:

> "All persons in Palestine shall enjoy full liberty of conscience, and free exercise of their forms of worship subject only to the maintenance of public order and morals. Each religious community recognized by the Government shall enjoy autonomy for the internal affairs of the community subject to the provisions of any Ordinance or Order issued by the High Commissioner."

The individual right to freedom of religion is not specifically mentioned, but is included in the broad term "freedom of conscience", which encompasses all forms of belief and points of view. C.A. 450/70, *Rogozinski* v. *State of Israel*, 26(1) P.D. 129, 134. During the Mandatory period, article 17 of the Order-in-Council provided that any legislation limiting absolute freedom of religion and worship in all forms, except as necessary to ensure public order and morals, should be null and void; it also prohibited legislation discriminating in any manner between persons on grounds of nationality, religion or language. Since the establishment of the State, however, the Order-in-Council no longer occupies the supreme position which it held under the Mandate: although it still is binding on the executive branch, the Knesset, by virtue of its sovereignty as a legislative body, is not prevented from passing laws in contravention of it. Israel's Declaration of Independence specifically guarantees freedom of religion and conscience to all citizens of the State, without regard to religion, race or sex. However, as noted elsewhere in this report, the Declaration does not have the force of a Constitution or an ordinary statute; the principles which it enunciates are basically of declarative effect, although they have served as an important interpretive tool in the formation of Israel's development of human rights. Indeed, it may be noted that one of the most recalcitrant problems that has prevented the consolidation and enactment of a constitution since Israel's founding has been the difficulty of resolving at the political level the fundamental tension between orthodox and secular conceptions of a Jewish State, as discussed above. Although the Supreme Court, in the absence of a proper constitution, has established several fundamental human rights in Israeli law by giving constitutive weight to the fact, as stated in the

Declaration of Independence, that Israel was founded as a democracy, it has ruled that it will interpret statutes in a manner which accords with the Declaration and upholds freedom of conscience and religion in its entirety only to the extent that there is doubt as to the legislative will of the Knesset in this regard (ibid., p. 136).

552. The enactment in 1992 of Basic Law: Human Dignity and Liberty may well help provide a firmer constitutional foothold for the protection of religious freedom. Although the Basic Law does not explicitly mention religious freedom as one of the fundamental rights protected therein, it does provide that fundamental human rights shall be interpreted "in the spirit of the principles in the Declaration of Independence" (sect. 1), which, as mentioned, specifically include the freedom of religion and conscience. Moreover, the express intention of the Basic Law is to establish "the values of the State of Israel as a Jewish and democratic State" (sect. 1 A); setting aside for the moment the difficulties in reconciling these two defining characteristics of the State, the constitutive principle of democracy, which the Supreme Court has used to buttress the existence of the right to freedom of religion and conscience, has now been given clear grounding in a constitutional statute. While the Court has not yet ruled squarely on the issue, several decisions and other writings by some of the Justices indicate support for the view that the general right to human dignity protected by the Basic Law includes freedom of religion and conscience (as well as other freedoms contained in the Declaration, such as the right to equal treatment and freedom of speech), which thus has the status of a supreme, constitutional legal norm. See, e.g., H.C.J. 5016/96, *Horev* v. *Minister of Transportation* (97 *Takdin* 421 (1997)) ["Religious coercion constitutes a violation of human dignity" (Barak, P.)]; H.C.J. 5394/92, *Huppert* v. *"Yad Vashem"*, 48(3) P.D. 353.

553. **Specific laws protecting freedom of worship, holy places and religious sentiments**. Apart from the general guarantees of religious freedom described above, several specific statutory provisions help ensure the freedom of religious worship and the safekeeping of and access to holy places for members of all faiths in Israel. Several of these are contained in sections 170-173 of the Penal Law, 5737-1977, as follows:

> "170. A person who destroys, damages or desecrates a place of worship or any object which is held sacred by a group of persons with the intention of thereby reviling their religion or with the knowledge that they are likely to consider such destruction, damage or desecration as an insult to their religion is liable to imprisonment for three years.
>
> "171. A person who willfully and without proving lawful justification or excuse disturbs any meeting of persons lawfully assembled for religious worship or wilfully assaults a person officiating at any such meeting or any of the persons there assembled is liable to imprisonment for one year.
>
> "172. A person who, with the intention of wounding the feelings of a person or of reviling his religion or with the knowledge that the feelings of a person are likely to be wounded or his religion likely to be insulted thereby, trespasses on any place of worship

or burial or any place set apart for funeral rites or as a depositary for the remains of the dead or offers any indignity to a human corpse or causes disturbance to any persons assembled for a funeral is liable to imprisonment for three years.

"173. A person who does any of the following is liable to imprisonment for one year:

"(1) publishes any print, writing, picture or effigy calculated to outrage the religious feelings or belief of other persons;

"(2) utters in a public place and in the hearing of another person any word or sound calculated to outrage his religious feelings or belief."

554. The Protection of Holy Places Law, 5727-1967, expands on the sanctions contained in the Penal Law by mandating that holy places of all religions be protected from any "desecration or other violations", and prohibiting any act that might impair the free access of members of all religions to their holy places or "anything likely to violate the feelings of the members of the different religions with regard to those places". Desecration or other violations of holy places are punishable by seven years' imprisonment; impairment of free access and violation of feelings as mentioned above are punishable by five years' imprisonment. It should be noted that the protection of religious feelings of religious groups under this law, unlike the parallel provisions in the Penal Law, does not require actual criminal intent or knowledge, but suffices with constructive knowledge by the offender that such an emotional violation is likely to be caused as a result of his conduct. In addition, several other statutes aim to protect holy sites against physical harm by requiring the consent and guidelines of the Minister of Religious Affairs as a precondition to the performance of certain actions in or near a holy place, such as excavations (Mines Ordinance, sect. 8 (1) (a)), drainage plans (Drainage and Protection Against Flooding Law, 5718-1958, sect. 22 (a)), water and sewage systems (Water Law, 5719-1959, sects. 70-71; Local Authorities (Sewage) Law, 5722-1962, sect. 14), declaring the site a national garden (National Parks and Nature Reserves Law, 5723-1963, sects. 4-5), vacating and demolishing houses (Building and Evacuation of Rehabilitation Areas Law, 5725-1965, sect. 51), and so on. Furthermore, most of the holy places are also antiquities sites, and thus are protected by similar provisions in the Antiquities Law, 5738-1978.

555. In practice, the access to holy places and freedom of worship for members of all faiths is very strictly guarded, with a few exceptions relating to the maintenance of public order or morals. Within the Christian community, there are no holy sites at which freedom of access and worship is restricted by the State. It may be noted that the physical control over some parts of the Church of the Holy Sepulchre, the nearby Deir Sultan chapel, the Tomb of St. Mary and the Church of the Ascension have been the subject of centuries-old internal disputes between different Christian denominations, and give rise to a certain limitation on freedom of access to members of rival denominations; the State, however, has adopted a consistent policy of non-intervention in these disputes.

556. **The Temple Mount**. Access to the Temple Mount, Judaism's holiest site and the third-most holy site to Muslims, has been treated with special caution and sensitivity due to the extreme volatility of the religious and political passions that surround the place, which have more than once erupted into violence. For this reason, among others, in the aftermath of the June 1967 war in which Israel took control of the Old City of Jerusalem, administration of the Temple Mount was left in the hands of the Muslim *wakf*. Moreover, the Government made the extraordinary decision to prohibit Jews from praying on the Temple Mount, as opposed to merely visiting the site. In the many petitions which have been filed over the years on behalf of Jewish groups seeking to pray on or near the Mount, the Supreme Court has held that while Jews have the fundamental right to pray on the Temple Mount, the realization of that right is conditional upon the approval of the government authorities, who must decide in each case whether an exception may be made to the general policy against allowing Jews to realize their right to pray, for reasons of public order and safety. In general, the Court decides in such cases whether the realization of the right of Jews to worship where they choose bears a "near certainty" of severe violation of public order or safety, and whether time, place and manner restrictions may enable a realization of the right without thus endangering public order. The Court has dismissed a series of petitions by Jewish groups seeking to pray on the Temple Mount; in one case the Court allowed a single Jew to pray on his own on the Temple Mount, provided that the prayer did not amount to "a demonstration", later limiting this right of individual prayer by holding that it could not be performed with prayer accessories such as a prayer book, prayer shawl or phylacteries. H.C.J. 99/76, *Harluf Cohen* v. *Minister of Police*, 30(2) P.D. 505; H.C.J. 67/93, *"Kach" Movement et al.* v. *Minister for Religious Affairs et al.*, 47(2) P.D. 1. In other cases the Court has allowed Jewish groups to pray outside one of the gates to the Temple Mount subject to restrictions of time, place, number of worshippers and so on. See, e.g., H.C.J. 292/83, *Temple Mount Faithful* v. *Commander of Police for the Jerusalem Region*, 38(2) P.D. 449. On the other hand, the Police reserves the right to exclude individual Muslims from entering the Temple Mount for prayers when it deems it necessary to do so to maintain public order and safety, typically during periods of particularly heightened tension or unrest, when thousands of worshippers come for Friday prayers. Under current practice, the Police maintain checkpoints outside the gates to the Temple Mount, and the *wakf* screens entrants inside the gates on "religious" grounds, such as appropriateness of dress or exclusion of non-Muslims during prayer times.

557. Adjoining the Temple Mount on the west side is the site known as the Western Wall, widely considered to be the most important existing place of prayer for Jews. During virtually the whole period since the destruction of the Second Temple in 70 A.D., Jews were not allowed to enter the Temple Mount by those who controlled it, and this remnant of the retaining wall of the ancient Jewish Temple became the most tangible link to the bedrock of the Jewish religion and history. Because of its centrality, the Wall has recently become the focus of conflicts regarding the right of all Jews to conduct prayer services according to their chosen manner of worship.

558. In 1989, a group of women who sought to pray at the Wall in a manner unacceptable to the majority of orthodox Jewry, carrying the scrolls of the Torah, wearing prayer shawls and reading from the Torah, were violently

evicted from the Wall area by orthodox worshippers. Two groups of women, who came to be known as the "Women of the Wall", petitioned the High Court of Justice to allow them to worship as they wished. H.C.J. 257/89, 2410/90, *Hoffman* v. *Custodian of the Western Wall*, 48(2) P.D. 265. During the hearing of the petition, the Regulations for the Protection of Holy Places for Jews, 5741-1981, were amended to prohibit the "conduct of a religious ceremony [at the Western Wall] in a manner not in accordance with the practice of the place, which violates the feelings of the worshipping public towards the place". A divided Court rejected the womens' petitions, subject to the recommendation of the President of the Court that a public committee be set up to find an arrangement which would not prevent the women from praying as they wished, and at the same time would reduce the injury to the feelings of the orthodox majority of worshippers at the Wall. The Committee thus established during the course of the legal proceedings also considered a request by Reform and Conservative Jewish groups to hold prayer services according to their custom in the rear section of the Western Wall plaza, after attempts to do so were disrupted due to the fact that these groups conduct their services without any physical separation between men and women. In April 1996, the Committee recommended that an "alternative plaza" be established for the prayer services of the women and Reform groups, outside of the Old City walls; it also recommended that the Reform and Conservative groups not be allowed to pray in groups according to their custom in the Wall plaza itself, even during separate prayer times. As of the submission of this report, a permanent solution has yet to be reached on the matter, which pits the right to freedom of worship of different segments of the Jewish community against one another. The division of opinion among the members of the three-judge Supreme Court panel rather aptly reflects not only the tension between these statutory rights, but also the underlying tension between religious and secular conceptions of the Jewish homeland. One of the Justices, D.P. Elon argued that the womens' manner of prayer violates Jewish religious law, such that allowing it would be tantamount to a desecration of the holiness of the site. Because allowing the women to pray as they wished, in Justice Elon's view, would violate the freedom of worship of orthodox persons, it was necessary to find "the broadest common denominator among all worshippers"; and as the vast majority of worshippers at the Wall are Orthodox, Justice Elon argued that their interest should be preferred, both because of the fear of violation of public order that the womens' services would arouse, and because such services would effectively prevent the orthodox worshippers from holding their services at the site. J. Levin, in a minority opinion, rejected the "broadest common denominator" approach of Justice Elon as giving a monopoly to one religious outlook on the issue over all others; instead, he argued that the proper balance must be found to enable all Jewish groups to pray in groups at the Wall without overly violating the feelings of other worshippers. P. Shamgar joined Justice Elon's opinion, but maintained that the "broadest common denominator" requires finding arrangements that "ensure freedom of access and freedom of worship to everyone, without forcing a unique form of conduct on those who do not desire it and without harm to the feelings of the faithful".

559. The rule in the "Women of the Wall" judgement may not extend beyond the special case of the Western Wall. In an earlier decision, for example, the Court declared null and void the refusal of a local religious council to lease

a public hall to a non-Orthodox group for holiday prayer services due to its deviance from orthodox practice. H.C.J. 262/62, *Peretz* v. *Kfar Shmaryahu Religious Council*, 16 P.D. 2101.

Imposition of secular norms in contravention of religious law or custom

560. In certain instances, overriding public policy interests are deemed to justify the imposition of certain secular norms on the entire population, as is the case with the criminal prohibition of bigamy. In rejecting an appeal against the prohibition of bigamy as constituting religious compulsion against the Muslim community, for whom bigamy is not forbidden by religious law, J. Silberg, noted that "the meaning of 'freedom of religion' is not freedom to do what the religion allows, but rather freedom to do what the religion requires". H.C.J. 49/54, *Milchem* v. *Judge of the Shari'a Court*, 8 P.D. 910, 913. Over the years, however, the Court has fully recognized the right to freedom from religion in such a manner that this earlier holding may not still be controlling (see H.C.J. 5016/96, *Horev* v. *Minister of Transportation*, supra).

561. Until 1980, the Anatomy and Pathology Law, 5713-1953, permitted the performance of autopsies without the prior consent of the deceased or the consent of his or her family. Following vehement opposition to the law by the Orthodox Jewish community, the law was amended to prevent autopsies in the event that a family member or, in appropriate circumstances, a relative, opposes such a procedure, except when it is necessary to use part of the body of the deceased to save another human life. The problem becomes more thorny when the secular norms are imposed upon authorized religious institutions rather than private persons. To take one example, the Supreme Court held the Rabbinical Court, in adjudicating questions of division of marital property in the context of a divorce suit, must rule in accordance with civil law principles guaranteeing the woman's right to an equal share in the marital estate, based on the notion that marital property issues are not among those issues of "personal status" which are to be governed by religious law. H.C.J. 1000/92, *Bavli* v. *Great Rabbinical Court of Appeal*, 48(2) P.D. 221. Such a decision departs from the principles of Jewish law, under which the divorcing husband must pay his wife the amount stipulated in the formal religious marriage contract, unless released from that obligation according to other *Halakhic* principles.

562. **Employment and days of rest**. The State of Israel fully guarantees the right of employees to observe the holidays and days of weekly rest prescribed by their religion. The Law and Administration Ordinance, 1948, provides that "Sabbath [Saturday] and Jewish festivals ... shall be the established days of rest in the State of Israel. Non-Jews shall have the right to observe days of rest on their Sabbath and holidays." The Hours of Work and Rest Law, 5711-1951, gives every worker the right to a day of weekly rest which shall not be less than 36 consecutive hours. Non-Jews may choose the day on which they take their weekly rest, either on Friday, Saturday or Sunday (sect. 9); this rule allows employees to adapt their work schedules, if they wish, to that of an employer who observes a different day of rest. Moreover, employers are forbidden from refusing to hire an employee who, upon being hired, notifies the employer that he or she will not work on the weekly day of rest for reasons of religious observance; nor may employers require an employee to

obligate to work on the day of weekly rest as a condition of employment. These restrictions do not apply to enterprises responsible for public security, State security, public health or the provision of certain essential services, as well as hotels and the electric utility. The law further forbids employment of workers, or the performance of work by owners of workshops or industrial undertakings, on the day of rest unless a permit is received. The Minister for Labour and Social Affairs issues permits for Sabbath work if he is convinced that interruption of work will impair the defence of the State, the protection of property or bodily integrity, or if it will cause significant economic loss or substantially impair the provision of essential services. A ministerial committee is authorized to give general permits to classes of enterprises, which it has done, for example, for hotels and guest houses, medical institutions and lifeguards. Members of cooperative societies, such as kibbutzim, may perform work on the Sabbath which is connected with maintenance of necessary services.

563. **Public restrictions on the Sabbath and holidays**. While the right of individual employees to observe their religious holidays and rest days is protected as described above, the mandatory closing of businesses and services on the Jewish Sabbath has been the source of contention between the religious and secular segments of the Jewish community. Until the late 1980s, local and municipal authorities tended to prohibit opening of businesses on the Jewish Sabbath and holidays by virtue of their general authority to oversee the opening and closing of various businesses. In 1987, for the first time, the Jerusalem Magistrate's Court held that a municipal regulation forbidding the opening of cinemas on the Sabbath was *ultra vires*, and that municipalities could properly enact such regulations only if explicitly empowered to do so by the Knesset. Cr.F. (Jerusalem) 3471/87, *State of Israel* v. *Kaplan et al.*, P.M. 5748, vol. 2, p. 265. Following this judgement, the Knesset amended the Municipalities Ordinance to give municipalities such explicit authority to take account of considerations related to religious tradition in ordering the opening or closing of businesses on the Sabbath. Municipalities Ordinance (Amendment)(No. 40) Law, 5750-1990. As a practical matter, cinemas in the larger cities, including Tel Aviv, Haifa and, to an extent, Jerusalem, are open on the Sabbath eve. In one city, Netanya, a municipal regulation was enacted to prohibit operation of cinemas on the Sabbath eve unless their operation is intended "for cultural or educational needs". In a petition challenging the validity of these regulations, the Supreme Court ruled that cinema is undoubtedly a "cultural and educational activity", and thus would not be prohibited. H.C.J. 5073, 5609, 5799/91, *Israel Theatres Ltd. et al.* v. *Netanya Municipality*, 47(3) P.D. 192.

564. Public bus transportation does not operate on the Sabbath, except for the cities of Eilat and Haifa, according to long-established custom which has not been altered by municipal by-laws. In those cities in which public bus transportation does not operate, there are private bus and taxi companies which, to a certain extent, serve the needs of the secular population. The Ben-Gurion International Airport has incoming and outgoing flights on the Sabbath, but El Al, Israel's national airline, has no flights on the Sabbath, by virtue of a government decision; nor does Israel Railways operate on the Sabbath.

565. Another hotly contested issue, primarily in Jerusalem, has been the closing of traffic arteries which pass through Orthodox Jewish neighbourhoods on the Sabbath and holidays. Many side streets in such neighbourhoods have long been closed on the Sabbath, so as not to violate the sanctity of the Sabbath for the Orthodox community, for whom all manner of labour (including motor transportation) is prohibited on the Sabbath. Over the past several years the principal conflict has been over the efforts to close a major traffic artery, Bar Ilan Street, during the Sabbath or at least during prayer times. Several petitions have been filed in this matter to the High Court of Justice (see, e.g., H.C.J. 5016/96, *Horev* v. *Minister of Transportation*, supra), and two separate public committees have been formed to recommend solutions to the problem. The Court has ruled that the Transportation Inspector, who is authorized to decide on closing major traffic arteries, may take the needs of the religious public into consideration, but must balance those needs against the freedom of movement of the non-Orthodox community. The street is currently closed during times of prayer, and open during the rest of the Sabbath.

566. While Israel recognizes the need to balance between the needs and interests of religious and non-religious communities in imposing general restrictions on the Sabbath such as those described above, the restrictions themselves do not impair the freedom of religion the secular community as such - certainly in the sense of the freedom to practise their religion in the manner they choose, but also in the sense of freedom from religious compulsion, provided that reasonable alternatives exist for the activities and services so restricted.

567. **Conversion**. In general every person in Israel has the right to change his or her religion, and the State intervenes neither in the individual's decision to adopt or change religion, nor in the decision of a particular religion to accept any person as a member. H.C.J. 1031/93, *Pesarro (Goldstein)* v. *Minister of Interior*. In certain circumstances, however, a formal official approval of conversion may be demanded, such as when the conversion would result in the conferral of particular rights as a result of one's religious status (primarily under the Law of Return). (ibid.) One must distinguish here between recognition of conversion by the secular organs of the State and approval of a change in religion for purposes of matters of personal status, which are determined by religious law. In Israel, the religion and nationality of every resident and citizen are registered in the Population Register, and these details appear on one's identity card. While the State may act to ensure, for example, that conversions to Judaism have not been made fictitiously for purely economic reasons, i.e. to receive the economic benefits given to an *oleh* under the Law of Return, the registration as Jews of persons who have converted to Judaism under the auspices of non-Orthodox religious bodies has been and remains a controversial issue, due to the opposition of the Orthodox religious parties to recognizing such conversions. In the late 1980s, the Supreme Court ruled that the conversion to Judaism of an *oleh*, so long as it were supported by a document evidencing conversion by *any* Jewish community *abroad*, Orthodox or not, would be sufficient for registration as a Jew. H.C.J. 264/87, *Sephardi Torah Guardians Movement* v. *Director of Population Administration et al.* 43(2) 726. In the *Goldstein* case noted above, the Supreme Court ruled, in a majority decision, that the Ministry of Interior also had no authority to refuse to recognize

non-Orthodox conversions to Judaism performed *inside Israel* for purposes of recognition as an *oleh* under the Law of Return. However, the Court stopped short of ordering the Interior Ministry to register the petitioner as a Jew and to give her the status of an *oleh*. Under current law, then, the legitimacy of a non-Orthodox conversion to Judaism may not be denied by State authorities acting under colour of a civil, secular law. On the other hand, the Rabbinical Courts, which apply Jewish religious law in matters of personal status, do not recognize persons converted by a non-Orthodox body as Jews. Thus, a person who was converted to Judaism abroad by a non-Orthodox body, who immigrated to Israel under the Law of Return and who was registered as a Jew in the Population Register will be unable to marry in Israel if the Rabbinate does not recognize the conversion.

568. The application of religious law to matters of personal status also affects the right of secular Jewish families who adopted children abroad to convert them to Judaism according to their chosen manner of observance. Rabbinical courts tend to pose Orthodox conditions for the conversion of such children, such as the observance of dietary laws and Sabbath, and the obligation to give the child an Orthodox education. As of the submission of this report a petition is pending in the High Court of Justice which seeks recognition for non-Orthodox conversions of such adopted children. The right of adoption generally, it may be noted, is reserved in Israel to a wife and husband together, and if the adoption is to be done in Israel the child must be of the same religion as the parents. Such requirements pose special difficulty for couples who do not share the same religion, or for those whose marriage may not be recognized by the law of the religion in question, or in the case of a child whose religion is not clear.

569. As of the time of submission of this report, legislative efforts are being made by religious parties to require all conversions to Judaism performed in Israel, at least, to be approved by an Orthodox body. At the same time, a committee appointed by the Prime Minister is attempting to work out a compromise arrangement.

570. **Burial**. As a practical matter, until very recently, all cemeteries in Israel, except those of kibbutzim, have been managed by religious institutions of the various religious communities. If a person who dies is not a member of a religious community which administers graveyards, or has expressed the wish not to be buried according to religious tradition, a special solution must be found, often at the kibbutzim. Jewish burial grounds are managed by officially appointed Orthodox burial societies (*hevrot kadisha*), which will bury only those who are Jewish according to Orthodox religious law, and according to an Orthodox ceremony. In a 1992 judgement, the Supreme Court ordered the Minister for Religious Affairs to recognize a non-Orthodox Jewish burial society, and also ordered the Israel Land Administration to allot land for such a non-Orthodox graveyard. In April 1996, the first "alternative" graveyard for Jews was inaugurated in Beersheba. Additional licences for alternative burial services have been granted in Jerusalem and Haifa. During that year a new law was enacted guaranteeing the right of citizens to be buried according to their chosen manner of observance in alternative graveyards (Right to Alternative Civil Burial Law, 1996). The Law requires

that such alternative graveyards be established in various areas around the country, sufficiently distant from one another so that all those who wish to take advantage of the new arrangement may reasonably be able to do so.

571. **Public restrictions related to Jewish dietary laws**. To a certain extent, Jewish dietary laws are applied by Knesset legislation or municipal by-laws to the general public or to the Jewish community. For example, public institutions which are not located in non-Jewish towns or localities, such as hospitals, the army, and government offices, serve kosher food (i.e. food which meets Jewish religious dietary laws) to enable religious Jews as well as non-religious Jews and members of other faiths to use these facilities. In addition, certain tenets of the Jewish dietary laws are enforced to varying degrees over the Jewish population. For example, the Swine-Raising Prohibition Law, 1962, forbids the raising, maintaining or slaughtering of pigs except in specified (generally Christian) towns, scientific research institutes and zoos. Local and municipal authorities may, by municipal legislation, restrict or forbid the sale of pork and pork food products within their jurisdiction. Local Authorities (Special Authorization) Law, 5716-1956. Although many cities have enacted municipal regulations forbidding the sale of pork under the above Law, these regulations are generally not enforced. In two currently pending court cases, sweeping prohibitions on the sale of pork have been challenged as unreasonably extreme in infringing upon the freedom from religion of the secular public and the "freedom of occupation" of storeowners who wish to sell pork.

572. Jewish dietary laws are also imposed on the importing of all meat from abroad. Because of a relative shortage of grazing land, most beef in Israel is imported from abroad, primarily from Argentina. Until 1992 the Government managed the import of meat, and allowed only kosher meat (that is, meat slaughtered and prepared according to the requirements of Jewish religious law) to be brought into the country. When the Government decided to privatize the importation of meat, it undertook to enact implementing legislation which would grant import licences only to those who obligated to import kosher meat exclusively. The Supreme Court overturned this decision as an excessive infringement on the freedom of non-Orthodox persons not to be subject to religious norms, and indicated that the decision also unduly restricted the freedom of occupation of companies who wished to import non-kosher meat. In the aftermath of this judgement the Knesset enacted a law which forbade importation of meat to Israel without a *kashrut* certificate from the Chief Rabbinate, and a parallel amendment to Basic Law: Freedom of Occupation, which specifically empowered the Knesset to enact laws in contravention of the Basic Law. As of the submission of this report, a petition is pending in the Supreme Court regarding the legality of the new laws.

573. Jewish dietary laws also forbid Jews from eating leavened bread or other foods which do not meet special strict dietary norms during the holiday of Passover. In 1986 a special law was enacted forbidding Jewish storeowners to display leavened bread publicly for purposes of sale or consumption. Passover (Prohibition of *Hametz*) Law, 5746-1986. In practice, however, this law does not prevent the sale of leavened bread or other "not-kosher for Passover" products in restaurants or in many stores, and the law does not apply in non-Jewish cities or neighbourhoods.

574. The Chief Rabbinate is responsible under law for giving certificates of compliance with Jewish dietary laws to restaurants and banquet halls. Such regulation is intended to ensure that any person who observes the religious dietary laws can rely on the proprietor's representation that the food is in fact kosher. However, under current practice the Rabbinate may condition the issuing of a *kashrut* certificate on matters of religious law unrelated to the dietary laws themselves; for example, it will refuse to grant a *kashrut* certificate to a restaurant which is open on the Sabbath, even if the dietary laws are strictly observed. In this manner, the control by the Rabbinate of *kashrut* supervision constitutes a preference of Orthodox Jewish practice over non-Orthodox Jewish practice, such as that of traditional but non-Orthodox Jews who may keep the dietary laws but be willing to eat at a place which is open on the Sabbath. The Supreme Court has demonstrated a willingness to intervene in certain cases of imposition of other religious norms by means of withholding the *kashrut* certificate. In H.C.J. 465/89, *Raskin* v. *Jerusalem Religious Council*, 44(2) P.D. 673, the Court, in accepting the petition of a belly-dancer against the policy of the Jerusalem Religious Council under which it refused to issue *kashrut* certificates to proprietors of banquet halls or restaurants that allowed "immodest" performances (including belly-dancing), held that the authority to issue *kashrut* certificates does not empower the Rabbinate to enforce a particular type of behaviour at the place in question, even if such behavior violates their religious precepts.

575. **The right to marry**. Israel entered a reservation upon ratifying the Covenant, explaining that matters of personal status are governed in Israel by the religious law of the parties concerned, and that to the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law.

576. Under the religious law applied in matters of marriage and divorce, many couples are prevented from being able to realize their right to marry in Israel, including couples who belong to different religions, or persons who may not marry the person of their choice due to prohibitions deriving from religious law. Many persons, particularly immigrants from the former Soviet Union and Ethiopia, who have been granted *oleh* status and registered as Jews in the Population Registry, are nevertheless not considered by the Rabbinate to be Jews according to *Halakha* and thus may not marry in Israel. These limitations on marriage have potential implications on the rights of any children born to parents whose marriage may not be recognized under religious law. In addition, Jewish religious law severely limits the ability of women in certain circumstances to get a divorce if the husband refuses, or to annul the marriage in the event that the husband's mental illness prevents him from being able to give a decree of divorce, or if the husband disappears but his death is not strictly confirmed.

577. **Participation of women and non-Orthodox representatives on religious councils**. Local and regional religious councils, which operate pursuant to the Jewish Religious Services Law, are responsible for the carrying out of certain religious functions in their community. Among other things, the religious councils are involved in the performance of wedding ceremonies, maintenance and operation of ritual baths (*mikvot*), support for synagogues and other religious institutions, and arranging cultural activities of a religious nature. These religious councils have been controlled exclusively by members

of the Orthodox community. In a landmark Supreme Court judgement in 1988, the Court ordered a religious council to take on a woman as a member, whose appointment they had opposed precisely on those grounds. H.C.J. 153/87, *Shakdiel* v. *Minister of Religious Affairs et al.*, 42(2) P.D. 221. Several petitions have also been filed against the refusal to appoint non-Orthodox representatives to several religious councils. Although the Supreme Court has more than once invalidated the appointment of religious councils in Jerusalem and elsewhere, in which a non-Orthodox candidate was rejected because his or her form of religious belief and practice approach was deemed unacceptable by members of the council, the various entities responsible for appointing the religious councils in Jerusalem and Tel-Aviv (that is, the municipal council, the local rabbinate and the Minister of Religious Affairs) have not yet implemented the Court's decisions. H.C.J. 699,955,1025/89, *Hoffman et al.* v. *Jerusalem Municipal Council et al.* 48(1) P.D. 678. On the other hand, these petitions have resulted in the appointment of Reform and Conservative Jewish candidates to the religious council in Haifa, Netanya and elsewhere.

578. **Funding and support of non-Orthodox institutions**. Until very recently, local and national government funding for Jewish religious services was considered virtually the exclusive domain of Orthodox Jewish institutions. As a result of a petition filed by Reform institutions, the Ministry of Religious Affairs amended its funding allocation criteria to guarantee funding of Orthodox and non-Orthodox institutions on an equal basis. The allocation of public land for use by non-Orthodox religious institutions on an equal basis with Orthodox institutions has also been the source of controversy in several towns and cities.

579. **Education**. The State maintains two parallel educational systems - State (secular) and State Religious. In addition, officially recognized alternative schools have been established by the Reform and Conservative Jewish movements at the primary and middle-school level, and certain Orthodox communities maintain their own educational institutions, some of which are recognized by the State. Some non-Jewish communities also maintain religious schools. Parents are free to choose which school their children will attend.

580. **Conscientious objection**. As discussed under article 8, women have a statutory right to claim exemption from military service due to reasons of conscience. Men may be exempted from military service at the discretion of the military authorities.

Aricle 19 - Freedom of opinion and expression

581. **Introduction**. As with other fundamental rights, the right to freedom of opinion and expression is not explicitly protected in Israel by constitutional legislation. On the basis of the commitment to maintain a democratic polity in Israel's Declaration of Independence, the Supreme Court has developed and buttressed the freedom of speech and opinion in its various manifestations when interpreting statutory provisions granting official powers over specific forms of expression. The right to free speech has long been recognized as a supreme, constitutional norm, and any limitations on its exercise for reasons related to public order or the rights and reputation of others must meet strict standards of scrutiny regarding their justification and scope. While Basic Law: Human Dignity and Liberty, enacted in 1992, does not directly

articulate the right to freedom of expression and opinion, it has been suggested that these rights fall within the ambit of the general right to human dignity protected by the Basic Law, as the stated purpose of the Law is to protect and entrench the right to human dignity as required in a democracy and in the light of the principles contained in the Proclamation of Independence. See, e.g., L.C.A. 2687/92, *Geva v. Walt Disney Co.*, 48(10) P.D. 251; H.C.J. 2481/93, *Dayan v. Wilk et al.*, 94(1) *Takdin* 1170; C.A. 105/92 *Re'em Engineers and Contractors Ltd. v. Upper Nazareth Municipality*, 47(5) P.D. 189, 201. The explicit judicial inclusion of the right to free expression within the scope of the Basic Law would enable the Supreme Court to invalidate new Knesset laws or ministerial regulations which do not meet the strict doctrinal limitations on official interference in freedom of expression which have been developed by the Court.

582. At the same time, a new draft Basic Law: Freedom of Expression and Association prepared at the Ministry of Justice is being circulated prior to submission to the Ministerial Committee on Legislation. The draft Basic Law articulates a basic right to freedom of expression and opinion, including the right to publish information and opinions, as well as to the related freedoms of assembly, procession, demonstration, association, and creative expression.

583. Certain aspects of the right to freedom of expression and opinion are discussed under articles 17 (the right to privacy and reputation), 18 (freedom of religious expression), 20 (racist or inflammatory speech), 21 (the right to demonstrate and to hold assemblies), 22 (the freedom of association) and 25 (freedom of political expression in the electoral process, including campaign financing). The discussion under the present article will address those facets of the freedom of expression not discussed elsewhere in this report.

584. **Freedom of expression: the "near certainty" test**. With several exceptions which are discussed below, freedom of expression may be restricted by official action only if, in the specific circumstances of the case, the speech in question gives rise at least to a "near certainty" that the public peace, broadly construed, will be endangered, and only if other means to lessen the severity or the likelihood of such a violation of public peace are of no avail. H.C.J. 73/53, *Kol Ha'am Ltd.* v. *Minister of Interior*, 7 P.D. 871, 888. Over the years, the "near certainty" test has been used to balance the fundamental right of free expression against other properly compelling governmental interests which fall under the general rubric of "public peace", such as the security and existence of the State, public order and safety, and the respect for public morals and sentiments. In certain contexts, the "near certainty" test has been tightened to require that the anticipated violation of the public peace be not only virtually certain to occur, but also "severe and serious" in itself, to justify a prior restraint on expression. See, e.g., H.C.J. 14/86, *La'or* v. *Council for Review of Films and Plays*, 41(1) P.D. 421, 432 (reversal of decision banning public performance of a play). The application of this doctrine to various forms of expression is discussed below. As discussed under article 20, in criminal prosecutions stemming from prohibited forms of speech, such as incitement to racism, a less demanding standard of proof is applied than the "near certainty" test for prior restraints.

585. The near certainty test is not applied to certain classes of instances where the freedom of expression clashes with other compelling interests which the court has deemed to have equal status, or where the legislature has indicated its preference for a different balance between the contending interests. In balancing between the integrity of the judicial process and the principle of free expression - primarily in the context of the prohibition on publishing accounts of matters which are *sub judice* under the Courts Law [Consolidated Version], 5744-1984 - a "reasonable possibility" that the publication in question will substantially affect the integrity of the proceedings is sufficient to justify a restraint on expression. Cr.A. 696/81, *Azulai* v. *State of Israel, 37 (2) 565*. When the freedom of speech collides with the right to privacy or reputation, the Supreme Court has held that time, place and manner restrictions should be employed so as to allow substantial realization of both basic rights. C.A. 723/74, *Israel Electric Company Ltd.* v. *Ha'aretz Publishing Ltd.*, 31(2) 281; F.H. 9/77 *Israel Electric Company Ltd.* v. *Ha'aretz Publishing Ltd.*, 32(3) 337.

586. **Legislative prohibitions on specific types of speech**. Certain types of speech are expressly forbidden by Knesset legislation. Among others, the Prevention of Terrorism Ordinance, 5708-1948, prohibits written or oral publication of any praise, support or encouragement of violent acts which are likely to cause the death or injury of a person, of threats of such violent acts, or of terrorist organizations (sect. 4). The name, picture, address or other identifying information regarding a minor who is either a defendant or witness in a criminal trial, or a complainant or victim in criminal trials involving certain sex-related offences, may not be published without explicit permission of the court (Courts Law [Consolidated Version], 5744-1984, sect. 70). Similar provisions require confidentiality with respect to the names or other information enabling identification of adopted children and their adoptive or biological parents (Child Adoption Law, 5741-1981, sect. 34). The Denial of the Holocaust Prohibition Law, 5746-1986, prescribes a maximum punishment of five years' imprisonment for publications which deny or minimize the extent of the crimes against the Jewish people and humanity committed during the Nazi regime in Germany, with the intent of defending perpetrators of such crimes or of praising or identifying with them; indictments under this law may be filed only with the consent of the Attorney-General. In addition, various provisions in the Penal Law, 5737-1977, prohibit seditious utterances, incitement to racism, insult of a public servant, and speech which is calculated to outrage the religious beliefs of those who hear it.

587. In addition, several specific matters, such as the deliberations and decisions of the Ministerial Committee on Security Affairs and other information bearing on State security have been declared secret by decision of the Government, to the extent that such publication of such information is not permitted by the responsible minister. See, e.g., *Yalkut Hapirsumim* 1611 (1970), part 2, p. 1590; *Yalkut Hapirsumim* 1287 (1966), part 2, p. 1874.

588. **Political expression**. Since the beginnings of free speech jurisprudence in Israel in the early 1950s, and increasingly during the 1970s and 1980s, the freedom of political opinion and of expression of a political nature has been rigorously defended by Israeli courts as essential to the existence of democracy. The Supreme Court has consistently upheld the principle that

freedom of expression entails the freedom not only to express popular opinions, but also those which the majority despises (E.A. 2,3/84, *Neiman* v. *Chair of the Central Elections Committee of the Eleventh Knesset*, 39(2) P.D. 225, 277), as well as the freedom to criticize government action (H.C.J. 351/72, *Kenan* v. *Council for Review of Films and Plays*, 26(2) P.D. 811). The Court has overturned a blanket ban by the Israel Broadcast Authority on television appearances by the late MK Meir Kahane based on the content of his political views (H.C.J. 399/85, *Kahane* v. *The Managing Committee of the Israel Broadcast Authority*, 41(3) 255). As discussed under article 20, the Court also annulled the disqualification of Rabbi Kahane's Kach party and of the Progressive List for Peace from running in Knesset elections based on the content of their political platforms, however objectionable they were to certain segments of the population (E.A. 2,3/84, Neiman, supra). In the aftermath of the latter decision, the Knesset amended Basic Law: Knesset and the Knesset by-laws to enable disqualification of a party's list of candidates if its platform clearly may be shown to be racist, to violate democracy or to negate the existence of the State as the State of the Jewish people. During the subsequent Knesset election campaign, the Court upheld the disqualification of the Kach party list on grounds of racism, and denied a challenge to the approval of the Progressive List for Peace. E.A. 1/88, *Neiman v. Chair of the Central Elections Committee of the Twelfth Knesset*, 42 (4) 177. In addition, the Penal Law was amended to prohibit publication of any utterance for the purpose of inciting to racism (sect. 144 B), whether or not the publication is true or actually resulted in racism.

589. In general, the prosecutorial policy of the Attorney-General's Office has been to protect the principle of free speech by refraining as much as possible from filing criminal charges for speech which may fall within the offences noted above. On the basis of this policy, the Attorney-General decided not to indict a former Chief Rabbi who declared that Jewish religious law requires soldiers to refuse to obey any order to evacuate Jewish settlements, and the Attorney-General's decision was upheld by the Supreme Court. H.C.J. 588/94, *Schlanger* v. *Attorney-General*, 48(3) P.D. 40. This prosecutorial policy underwent a certain change over the past several years, particularly following the assassination of Prime Minister Yitzhak Rabin in November 1995. Earlier that year, for the first time, a person was charged and convicted of publishing incitement to racism, based on an article discussing the religious law relating to the killing of non-Jews (Cr.F. (J-m) 251/94 *State of Israel* v. *Elba* (4 April 1995)); the trial court held that to convict the defendant it was not necessary to prove a "near certainty" that the article in question would lead to further racist acts. Similarly, three persons were convicted of publishing praise for acts of violence after having voiced support for the massacre of Muslim worshippers at the Tomb of the Patriarchs in Hebron in 1994 (Cr.A. 116/95, *Tadmor* v. *State of Israel* (7 September 1995)). Two youths who, several weeks prior to Prime Minister Rabin's assassination, published and distributed a flyer picturing Rabin in an S.S. uniform were convicted of defamation, insult of a public official, support of a terrorist organization and defacing of property, and received suspended sentences of imprisonment. In addition, several rabbis were investigated on suspicion of issuing religious rulings mandating the killing of Rabin, but were not indicted due to insufficient evidence. In these and other cases, the Attorney-General deemed that the speech in question gave rise to a near certainty of a violation of public order. A directive was

subsequently issued which made the opening of any investigation into cases involving suspected praise of the assassination conditional on the consent of the head of the Israel Police Investigations Department.

Freedom of the press

590. **Licensing of print media**. The legislative framework in which the print media operates in Israel dates from the Mandatory period, and may be said to stand somewhat at odds with the full-bodied protection of freedom of expression developed by the Supreme Court in post-independence Israel. The Press Ordinance, 1933, was enacted by the Mandatory authorities in the aftermath of the 1929 riots by the Arab population, and was motivated to a significant degree by the findings of a commission of inquiry which held that inflammatory articles in the press played a crucial role in inciting the passions of the population. See Report on the Commission On the Palestine Disturbances of August 1929 (the "Shaw Report"), Cmnd. 3530, p. 90, 167. Later on, as the tensions between the Mandatory authorities and the local population intensified, the British High Commissioner enacted additional administrative restrictions on licensing of print media in the Defence (Emergency) Regulations, 1945. Under the still-valid Mandatory legislation, both newspapers and printing presses which publish them must have a licence to operate; newspapers are defined very broadly as "... any publication ... published in Palestine for sale or free distribution at irregular or irregular intervals" (Press Ordinance, sect. 2). Licensing thus became an effective means of regulating almost all print media in the country, with the exception of books and one-time pamphlets. A licence is granted only if the proprietor and editor meet a series of qualifications, such as having reached 25 years of age, passed matriculation exams and showing ability to speak, read and write in the language in which the newspaper is printed; the Minister of Interior has discretion to waive these personal requirements.

591. The ministerial control over issuing and repealing of newspaper licences under the Mandatory legislation is very broad. The District Commissioner at the Ministry of the Interior may refuse to issue a licence, and need not give reasons for its decisions (Defence (Emergency) Regulations, 1945, Regulation 94). Persons who publish or edit a newspaper without a licence are subject to criminal sanctions. In addition, a licence may be suspended or annulled on a broad array of grounds, some of which are purely technical, such as if the licence is not used for three months after being issued, if notice is not given of the appointment of a new editor or of the intention of the owners of the paper to leave Israel, if the owners of a daily newspaper fail to publish at least 12 consecutive issues, excluding holidays, in each calendar month, or if non-daily publications do not fulfil comparable frequency requirements. Under section 19 of the Press Ordinance, the Minister of the Interior may suspend publication of a newspaper if, in his opinion, it has published information which is likely to endanger the public peace, seditious expression, or "false news ... or rumours calculated ... to create alarm and despondency"; while the Minister may warn the paper in advance of his intention to suspend publication, he is not required to do so. The courts are empowered to close down or suspend the activity of newspapers and printing presses, as well as to disqualify a person from owning or editing a paper, if they were convicted of seditious libel (Press Ordinance, sect. 23). Newspapers are also obligated under the Press Ordinance to publish any denial

issued by the Government pertaining to information previously published in the paper, as well as any official announcements free of charge. In addition to governmental control of local newspapers, the Press Ordinance empowers the Minister of Interior to regulate the entry of foreign printed material into the country which is deemed likely to endanger the public peace.

592. Since Israel's independence, the administrative and criminal sanctions of the Mandatory legislation regarding licensing of newspapers have largely fallen into disuse, and, with a few exceptions, their application has been significantly narrowed by the case law. The requirement to print official announcements and responses has never been enforced. Criminal sanctions for sedition or for publication without a licence have very rarely been employed. Due to the extremely broad definition of newspapers in the Press Ordinance, the licensing requirement is often not applied, particularly with regard to smaller publications. Beginning with the landmark *Kol Ha'am* judgement in 1953, in which the Supreme Court overturned the closure of the Hebrew and Arabic Communist dailies for severe criticism of then-Foreign Minister Abba Eban, the power of the Minister of Interior to suspend publication of a newspaper has been made subject to the "near certainty" test discussed above. Over the last 20 years, the Supreme Court has only once upheld, despite the doctrines protecting freedom of expression, the closure of a newspaper under section 19 of the Press Ordinance due to the near-certainty that continued publication would endanger the public peace. H.C.J. 644/81 *Omar International Inc., New York* v. *Minister of Interior*, 36(1) P.D. 227, 234. In 1994, the licence of Al-Biyan, an Arabic newspaper published in Jerusalem, was permanently revoked due to suspected connections with the Hamas terrorist organization. On the other hand, the parallel power of the District Commissioner under the Defence (Emergency) Regulations, 1945, to order the closure of a newspaper or to revoke its permit without giving reasons therefor has been used several times since Israel's independence. While the Supreme Court has repeatedly and severely criticized such sweeping power as "a drastic, even draconian provision, enacted by a colonial regime, [which] does not accord with fundamental principles of a democratic State regarding freedom of speech and expression" (see, e.g., H.C.J. 2/79, *Al'Asad* v. *Minister of Interior*, 36(1) P.D. 505, 513), the extent of judicial review of such decisions is limited in those instances in which the District Commissioner does not give reasons for the closure. As an admittedly partial remedy to this problem, the Court generally uses its powers to inspect, in camera, privileged security-related information on which the Commissioner has based his decision, to review whether it indeed justifies such a drastic restriction on the freedom of expression. See, e.g., H.C.J. 322/81, *Mah'ul* v. *District Commissioner, Jerusalem District*, 37(1) P.D. 789.

593. **Military censorship and the "Editors' Committee"**. In addition to the powers of the District Commissioner mentioned above, the Defence (Emergency) Regulations, 1945, also give the Chief Military Censor broad powers to oversee publications in the print and electronic media. Under those regulations, the Censor may require any person involved in publication of information or opinions to submit such material for his review and approval, and the Censor may forbid publication of any material which "is likely, or may be likely, to injure ... the defence of Israel, the public peace or public order" (Regulations 87 (1), 97 (1)). The Censor also has the power to confiscate or forbid the use of printing presses used to publish material which he has not

previously approved. Moreover, one may not publish any notice or other symbols indicating that the Censor has amended an article or broadcast prior to publication, without the Censor's consent.

594. The Supreme Court has strictly limited the powers of the Censor to impose administrative sanctions against the press. In the landmark *Schnitzer* case, the Court overturned the decision of the Censor to forbid publication by a local Hebrew-language paper of an article highly critical of the head of the Institute for Intelligence and Special Functions (the Mossad) shortly before the end of his tenure. Dismissing claims that the publication would harm the functioning of the Mossad at all levels, and that by focusing attention on the head of the Mossad it would substantially endanger his personal security, the Court held that only a near certainty of a substantial, grave injury to public peace or State security could justify prior censorship. H.C.J. 680/88, *Schnitzer* v. *Chief Military Censor*, 42(4) P.D. 617.

595. In practice, the Censor does not exercise his powers against those newspapers which are members of an informal "Editors' Committee" which maintains an agreement with the Minister of Defence regarding censorship matters. The Editors' Committee originated in 1950, and included the major Hebrew-language dailies as well as the English-language daily *Jerusalem Post*. Under this agreement, the Censor obligated not to impose administrative sanctions, such as closure, against the member newspapers, and to disqualify only distinctly security-related information from publication, as opposed to information bearing on the maintenance of public peace and order; the newspapers, on their part, agreed to self-censorship in military matters that might harm State security, and not to file petitions against the Censor's decisions in the High Court of Justice. The agreement was amended several times over the years, and gave rise to different treatment between those papers which were members of the Editors' Committee and those which were not.

596. In the aftermath of the *Schnitzer* judgement noted above, the agreement between the "Editors' Committee" and the Minister of Defence was amended to restrict the Censor's powers only to those instances in which there is a "near certainty that the publication will result in serious harm to the security of the State" (sect. 1 of the agreement); moreover, military censorship would not be applied to "political matters, opinions, interpretation, evaluations or any other matter unless they contain or allow one to derive security-related information" (sect. 2 of the agreement). Until recently, the agreement provided for internal review of the Censor's decisions, by a special committee composed of one representative of the military, the press and the public, respectively, in lieu of review by the High Court of Justice.

597. With regard to those newspapers which are not party to the "Editors' Committee" agreement, the Censor typically issues an order requiring the editors to submit news articles on matters specified in the order.

598. The "Editors' Committee" agreement was substantially amended in May 1996, following a report prepared under the auspices of the Knesset Foreign Affairs and Defence Committee. Among other things, the agreement preserves the right of all media to file petitions against the Censor in the High Court of Justice; it clarifies the limitation of military censorship to matters clearly related to State security; it allows all media to quote freely

from items previously published in Israel or abroad; and it established a Censorship Appeals Committee, headed by a retired Supreme Court Justice. Under the procedures in the agreement, the Censor cannot appeal decisions by the Committee, while the newspaper can appeal to the Supreme Court if it wishes. The new "Editors' Committee" agreement applies to all media in Israel, whether or not they are members of the "Editors' Committee".

599. **Broadcast Media**. Until the late 1980s, there was only one television station, a public body under the auspices of the Israel Broadcast Authority, and several radio stations, including "Kol Israel", also part of the Broadcast Authority, and "Galei Zahal", run as a division within the Israel Defence Forces. Between 1986 and 1990, the Knesset enacted several laws which provided for cable television broadcasts, including original programming, pay-per-view television, and the creation of a second television channel in which programming is carried out by private franchisees. Cable broadcasts bring unedited programming by satellite from around the globe into the homes of Israelis, including from Jordan, Morocco, Turkey, the Russia Federation, several European countries, India and the United States. In 1995, the Government began to issue franchises for local radio stations around the country. These developments have changed the face of broadcast media in Israel, and by greatly expanding the range and variety of sources of broadcasted information, they have made an important practical contribution to the freedom of expression in Israel.

600. The Israel Broadcast Authority (IBA) is a public body which operates under the Broadcast Authority Law, 1965. It bears a statutory obligation to broadcast "reliable information" on current events and "to make room for appropriate expression of different views and opinions current among the public" (Broadcast Authority Law, sect. 4). Because of its statutory role as a forum for different views and ideas, the Broadcast Authority bears not only a duty to broadcast, but also to enable reasonable reception of its broadcasts, so that it may effectively promote the principle of free expression. H.C.J. 3472/92, *Brand* v. *Minister of Communications*, 47(3) 143. The Authority's policies are determined by a managing committee and a plenary appointed by the Government from various political parties according to their representation in the Knesset. As a public authority, its actions are reviewable for administrative legality by the High Court of Justice.

601. The willingness of the Supreme Court to intervene in the Authority's broadcast decisions depends in part on the type of expression involved. If the broadcast decision is based on artistic or professional considerations, then the Court will almost never intervene in the exercise of the editor's discretion. In contrast, if the IBA decides not to broadcast a commercial advertisement, his decision may be reviewed for discrimination or reasonableness. H.C.J. 606/93, *Kidum Enterprises and Publishers (1981) Ltd.* v. *Broadcast Authority*, 48(2) 1. Decisions by the Authority to prevent airing of a particular person or political group on content-based grounds have been overturned twice by the Court, first in the decision during the early 1980s not to air interviews with persons who were associated with the PLO, which Israel had not yet recognized at the time (H.C.J. 243/82, *Zichroni* v. *Managing Committee of the Broadcast Authority*, 37(1) P.D. 757), and later in the refusal of the Authority to broadcast interviews with MK Meir Kahane, so as to prevent exploitation of government-controlled media for purposes of racist

incitement, as discussed above under this article. In general, however, the Court will intervene in the Authority's broadcast decisions only in rare instances, when the harm to important public interests is quite severe. See, e.g., H.C.J. 606/93, *Kidum*, supra; H.C.J. 2437/92, *Lev* v. *Minister of Education and Culture*, 46(3) P.D. 756 (petition against changing the day of broadcast of a particular news programme denied); H.C.J. 1/81, *Shiran* v. *Broadcast Authority*, 35(3) P.D. 365 (a documentary on Zionist history which allegedly failed to present adequately the contribution of Oriental Jewry did not give rise to patent illegality or a near certainty that the public peace would be violated, which would justify a court order to prevent the broadcast).

602. Whereas the IBA is funded by a license fee on all television owners and a tax on car owners, the new second television channel and local radio stations established under the Second Television and Radio Broadcast Authority Law, 1990, are operated by private franchisees and funded through sale of commercial broadcast time. In recognition of the power given to the franchisees, and the risks of concentrating ownership of the media in the hands of a small number of dominant economic enterprises with vested economic or political interests, the law places a series of restrictions on the franchisees, regarding both the ownership of the company holding the franchise and the content of broadcasts. No company may hold a franchise to broadcast on the second television channel or local radio if it also holds a franchise for cable broadcasts; if a single person has more than 30 per cent of a particular form of control in the company; or if more than 24 per cent of the franchisee is owned by a newspaper publisher or a company that owns a controlling share of a newspaper (sect. 40 (B) of the Law). In addition, a local radio franchise may not be given to any person or entity which has an ownership interest, directly or indirectly, in a newspaper or a company that holds a television broadcasting franchise (sect. 40 (C) of the Law). Similar provisions apply to cable franchisees. Concession holders are expressly forbidden from broadcasting any "incitement to racism, discrimination or substantial harm to a person or a group of people on the basis of their religious, national, sexual or ethnic affiliation, their way of life or origin"; nor may they broadcast any party-political propaganda, except for approved election broadcasts during Knesset campaigns. The owners of the franchise are strictly forbidden from airing their own personal views, as well as those of the directors or other parties holding an interest in the franchisee. The managing council of the Second Broadcast Authority has promulgated detailed ethical rules which impose upon franchisees, inter alia, a duty to promote responsibly the principles of free expression and the right of the public to receive information, including the right to express deviant or unpopular views (Second Television and Radio Authority Rules (Ethics in Television and Radio Broadcasts), 1994, sect. 2); the duty not to refrain from airing "information for which there is a public interest" (sect. 3 of the Rules); the duty to maintain fair, objective, accurate and balanced broadcasts (sects. 5-7); and the duty to provide persons criticized with an opportunity for proper response (sects. 9 and 10).

603. All Israeli broadcast media are subject to military censorship in security-related matters in the same manner as the press, as well as to

regulation regarding the content of films, dramatic and artistic programmes, as discussed below under this article. Foreign broadcast media, however, are not subject to military censorship.

604. **The right to receive information**. In a long line of precedents, the Supreme Court has clearly articulated the right of the public to receive information as an essential facet of the freedom of expression, and hence crucial to the maintenance of a democracy. This "right to know" has been held to entail the publicizing of the decisions and actions of government authorities and the access of the media to information held by public bodies on matters of public interest, even absent a specific statutory duty of disclosure. H.C.J. 5771/93, *Citrin* v. *Minister of Justice* 48(1) P.D. 661. It also has been held to require the disclosure to individuals of information affecting them personally, such as employers' files, medical reports or information relating to legal proceedings to which the person is a party. See, e.g., H.C.J, *Shapira* v. *District Committee of the Chamber of Advocates, Jerusalem*, 25(1) P.D. 352 ("documents received by the authority in the course of exercising its authority under law must be open before the involved party"); H.C.J 337/66, *Fital* v. *Appraisal Committee, Holon Municipality*, 21(1) P.D. 69. Only if the disclosure of such information is expressly prohibited by law, or would violate compelling interests such as the right to privacy, State security, foreign relations, or certain private economic interests, or the information is privileged under law, may the right to receive information be qualified. Perhaps the most distinctive application of the public's right to know occurred in the *Shalit* case, in which the Supreme Court held that agreements between political parties, Knesset factions or individual Knesset members pertaining to the formation of government coalitions must be made public, unless there is a near certainty that certain fundamental public interests will be severely harmed. H.C.J. 1601/90, *Shalit* v. *Peres et al.*, 44(3) P.D. 353.

605. It may be said, however, that the disclosure of information by government authorities has not yet become as firmly rooted in practice as it is in the decisions of the Supreme Court. The absence of legislation imposing a duty of disclosure by public authorities, the lack of efficient, computerized archiving, and perhaps even a certain misplaced understanding of official secrecy deriving from the prevalence of legitimate security concerns in everyday life, have led to an unfortunately common set of habits and attitudes in some quarters of the public service, in which ordinary, proper requests for information relevant to the public or to the applicant are not always routinely granted, and sometimes are denied without sufficient justification. In recognition of the need to remedy this state of affairs, the Knesset is in the final stages of enacting a Freedom of Information Law, based on a previous draft bill prepared with the involvement of a coalition of NGOs. The draft law imposes a general duty of disclosure on ministerial offices, other State institutions, local and municipal authorities and corporations controlled by them; any refusal to disclose must have written justification.

606. **Censorship of films and plays**. Pursuant to Mandatory legislation, theatre productions and films have been subject to prior censorship by a civilian Censorship Council to protect against violations of public morals or sentiments or of public order. Over the years, the Supreme Court has

considerably restricted the scope of the Censorship Council's discretion to restrict freedom of expression, firmly upholding the right "to create any creation, whether of sublime artistic merit or wholly lacking artistic merit, and even if, in the [Censorship] Council's view, it is a 'perverse mix of erotica, politics and deviance of all types'" (H.C.J. 14/86, *La'or*, supra; see also H.C.J. 4804/94, *Station Film Ltd.* v. *Council for Review of Films*, 97(1) *Takdin* 712).

607. Under the Cinematic Films Ordinance, 1927, no film may be screened without prior approval by the Film Censorship Council. The Council has the authority to disqualify a film in its entirety, to censor specific segments, or to set a minimum viewing age. The Ordinance provides no substantive standards for the decisions of the Council, and initially the Supreme Court displayed a reluctance to intervene in the discretion of the Council without a specific statutory foothold (see, e.g., H.C.J. 383/73, *Avidan* v. *Geri*, 28(2) 766), provided that the considerations weighed by the council were broadly related to questions of morals and good taste (H.C.J. 146/59, *Cohen* v. *Minister of Interior*, 14 P.D. 283). In the early 1960s, the Court for the first time applied the "near certainty" test to a cinematic production, overturning the decision of the Council to disqualify a newsreel which showed a violent altercation between citizens and the police. H.C.J. 243/62 *Israel Film Studios* v. *Geri*, 16 P.D. 2407. In the mid-1970s the Court applied this doctrine for the first time to a non-news film, in overturning the Council's decision to forbid the screening of "The Night Watchman", a film which involved a daring erotic plot against the background of the Holocaust. H.C.J. 549/75, *Noah Films Ltd.* v. *Council for Review of Films*, 30(1) P.D. 757. A decade later, the Court significantly expanded the protection given to artistic expression in films by holding that the Council could disqualify a film for injury to public sentiments only if there is a "near certainty of a severe, extreme, deep and crass injury to such sentiments, which may not be avoided". H.C.J. 806/88, *Universal Studios Inc.* v. *Council for Review of Films and Plays*, 43(2) P.D. 22 (decision to disqualify "The Last Temptation of Christ" by Martin Scorcese as injurious to sentiments of the Christian community overturned). The Court rejected the role of the Council as the arbiter of truth or of moral and educational standards, and will allow disqualification of a film only as a last resort, if less severe methods, such as setting a minimum viewing age, cannot prevent such a severe and near-certain violation of public order. H.C.J. 14/86, *La'or* v. *Council of Review of Films and Plays*, supra. Even the fact that a film contains material which constitutes a criminal offence, such as a violation of religious sentiments or obscenity (sects. 173, 214 of the Penal Law, 1977) is not sufficient to justify a prior restraint on screening. H.C.J. 806/88, *Universal Studios*, supra.

608. All television stations in Israel are bound, by law or practice, not to screen films which have been disqualified by the Censorship Council. This obligation does not apply to foreign televisions or satellite broadcasters.

609. The statutory arrangements regarding censorship of plays were similar to those regarding films, and were administered by the same Council. Following mounting criticism of the Council's decisions in this area, and the severe narrowing of its discretion by the Supreme Court, the Knesset decided in 1991 to repeal the Council's authority with respect to plays, initially for a

two-year trial period, and then permanently, in favour of new criminal sanctions for obscene displays and publications (Penal Law, 1977, sect. 214). The term "obscenity" is not defined in new provision, and has yet to be interpreted by the Supreme Court.

610. **Confidentiality of journalists' sources**. Unlike certain types of communications, such as between attorney and client, doctor and patient, psychologist and client, and sensitive security-related information, the right of a journalist not to reveal documents or sources of information is not protected by statute. Nevertheless, the Supreme Court has recognized such a "journalist's privilege", to the extent that disclosure is not essential, or at least of substantial importance, to the prosecution of justice in connection with serious criminal offences, to avoid serious wrongdoing to persons or grave violations of public order; even then, a court will not order disclosure of the journalist's sources or information unless it is shown to be crucial in the concrete circumstances of the case, and other available evidence cannot fulfill the purpose for which the privileged information is sought. Cr.M. 298, 368/86, *Citrin* v. *Disciplinary Tribunal of the Chamber of Advocates, Tel-Aviv District*, 41(2) P.D. 337; H.C.J. 172/88, *Time, Inc.* v. *Minister of Defence*, 42(3) P.D. 139.

611. A Government bill to entrench the journalist's privilege is in the advanced stages of preparation, and will be submitted in the near future to the Ministerial Committee on Legislation.

612. **Sub judice rules**. As mentioned above, the Courts Law, 1984, prohibits publication of accounts of pending legal proceedings if there is a "reasonable possibility" that they will affect the course or outcome of the trial. One of the rare instances in which this *sub judice* rule was enforced involved articles published in a major daily newspaper during the trial of John Demjanjuk for crimes against humanity, in which the author purported to show that Demjanjuk was in fact "Ivan the Terrible" from Treblinka, a central question of fact in the trial and appeal. The paper, as well as its editor and the author of the article in question, were convicted of a violation of the *sub judice* rule after Demjanjuk's counsel successfully petitioned the High Court of Justice to force the Attorney-General to initiate criminal proceedings. H.C.J. 223/88, *Sheftel* v. *Attorney-General*, 42(4) P.D. 356.

613. In addition to the *sub judice* rule itself, the Penal Law also prohibits publications which express contempt or scorn for a judge and his manner of deciding cases, unless the criticism is "honest and courteous", and the matter is of public interest.

614. In practice, Israelis are inundated with local and foreign media. There are nearly 60 newspapers regularly published in Israel, of which 14 are dailies; 8 of the daily newspapers are in Hebrew, 1 in Arabic, and the others in English, Russian, and other languages. Literally hundreds of foreign newspapers and periodicals are sold on newsstands, and all people may subscribe to them freely. Radio broadcasts from around the region and beyond are easily received, and cable and satellite television broadcasts bring in an extremely broad range of foreign news and programming. Israel is host to a disproportionately large number of foreign journalists, who generally have the same freedoms, and are subject to the same censorship limitations, as Israeli

journalists. They meet freely with government and military officials, and are provided daily with translations of articles from the Hebrew press by the Government Press Office. In certain instances, the freedom of foreign journalists is greater than that of their Israeli counterparts, such as in gaining access to areas where there is a risk of violence.

615. **Prevention of discrimination based on political or other opinion**. In addition to the measures described above under this article, several laws contain provisions which aim to prevent interference with the free expression of political or other opinions. Under the Equal Employment Opportunities Law, 5748-1988, both governmental employers and private employers with six or more employees are forbidden from taking a person's political or other opinions into account in making decisions regarding hiring, promotion, termination of employment, training, or wages and conditions of employment. The Council for Higher Education is forbidden from imposing any restrictions on freedom of opinion or conscience in rescinding accreditation for an educational institution (Council of Higher Education Law, 5718-1958, sect. 18). In national elections, all parties, candidate lists and prime ministerial candidates are given a fixed amount of free radio and television broadcast time (Elections (Modes of Propaganda) Law, 5719-1959, sects. 15-15 A).

Article 20 - Prohibition of propaganda relating to war or racial, national or religious hatred

616. **War propaganda**. The dissemination of war propaganda is prohibited by section 166 of the Penal Law, 5737-1977, which provides as follows:

> "166. A person who, by making a speech in a public place or at a public gathering or by publishing any writing, endeavours to incite hostile acts against the government of a friendly State is liable to imprisonment for three years."

Under the standard of *mens rea* defined in the Penal Law (sect. 20), the above prohibition will apply not only to a person who clearly intends to incite to war, but also if that person is merely indifferent or careless regarding the possibility that such hostilities might occur.

Racism, national or religious hatred

617. Until the mid-1980s, there was no legislation specifically forbidding incitement to racism or national-ethnic hatred. Persons advocating racial, national or religious hatred could, and have been, prosecuted for sedition under section 133 of the Penal Law, which is defined to include "promoting feelings of ill-will and enmity between different sections of the population" (Penal Law, sect. 136). In such cases, the "near possibility" that a seditious statement would reach the ears of persons in Israel is sufficient for conviction (See Cr.App. 3795/95, *Attorney-General* v. *Balhasan* (person who advocated a campaign against "Satanic Islam" convicted of sedition)). For the most part, however, racist incitement was generally dealt with in judicial decisions in the context of the right to freedom of expression, with the courts displaying a wariness of placing prior restraints on racist expression, for fear of compromising the principle of free speech. As the court held in one case, "... the weakness of racism and incitement is the lie which they

harbour, which is laid bare to everyone precisely by that free competition of opinions and ideas that makes democracy unique". E.A. 2,3/84, *Neiman* v. *Chairman of the Central Elections Committee of the Eleventh Knesset*, 39(2) P.D. 225.

618. Two landmark decisions by the Supreme Court during the mid-1980s, which followed the approach to racist speech noted above, ended up prompting legislative reform. In the *Neiman* judgement (E.A. 2,3/84, supra), the Court overturned the decision of the Central Election Committee which disqualified the Kach party list, led by Rabbi Meir Kahane, from running for election to the 11th Knesset on free speech grounds, as well as on the ground that the right to be elected should not be limited without explicit statutory authorization. In another controversial judgement involving Rabbi Kahane's Kach party, the Supreme Court annulled the decision of the Israel Broadcast Authority, which refused to broadcast statements made by Rabbi Kahane or other members of the Kach party, except for those having "distinct news value", due to the inflammatory nature of the party's views and statements. H.C.J. 399/85, *Kahane* v. *Broadcast Authority*, 41(3) P.D. 255. In invalidating the decision of the Broadcast Authority, the Court relied not only on general principles of free speech, but also on the fact that the Kach faction was a legitimate political party, represented in the Knesset.

619. **Legislative reform**. In the aftermath of the Supreme Court's decisions *Neiman* and *Kahane* v. *Broadcast Authority* noted above, the Knesset enacted two legislative provisions specifically prohibiting racist incitement. The first was an amendment to the Penal Law, which made the publication of any utterance for the purpose of inciting to racism punishable by five years' imprisonment (sect. 144 B), whether or not the publication is true or actually resulted in racism. "Racism" is defined in section 144 A as "persecution, humiliation, display of hostility, or violence, or causing strife against a group or segments of the population, all due to colour or belonging to a race or national-ethnic background". Possession of material containing racial incitement, so defined, is punishable by a maximum prison sentence of one year. A later amendment to the Penal Law stiffened minimum and maximum sentences for roughly half of the offences in the entire Penal Law if they are committed with a racist intent, as defined above (Penal Law, sect. 144 D1). The offences covered by this amendment include all offences against a person's body, life, liberty, property and welfare; threats and extortion, hooliganism, nuisances, and abuse of office by public servants. Three of these offences are relevant to the obligations under this article. Under section 173 of the Penal Law, a person who "publishes any print, writing, picture or effigy calculated to outrage the religious feelings or belief of other persons", or who "utters in a public place and in the hearing of another person any word or sound calculated to outrage his religious feelings or belief" is liable to imprisonment for one year. Section 194 (b) of the Law forbids insulting a person in a public place "in a manner likely to provoke a person present to commit a breach of the peace"; and section 198 prohibits all acts "likely to cause public mischief". If any of these latter offences are committed with racist intent, then the maximum sentence is doubled.

620. The Knesset also amended Basic Law: the Knesset, to forbid any political party from running for election to the Knesset if, inter alia, its objects or actions, explicitly or by implication, show incitement to racism or denial of the democratic character of the State (Basic Law: Knesset, sect. 7 A). On the basis of this amendment, the Kach party was disqualified from running in the subsequent national elections, as its objects and actions were deemed by the Supreme Court to be "frighteningly similar to the most horrible examples which the Jewish people has experienced". E.A. 1/88, *Neiman v. Central Elections Committee of the Twelfth Knesset*, 42(4) P.D. 177, 197.

621. To justify the curtailment of the right to be elected, it must be shown that the racist incitement is one of the party's central and controlling aims, an eminent reflection of its identity, and not merely a marginal concern; the party's candidacy in the elections must be a means to realize such racist objectives; and the evidence of such racist objectives or actions must be clear, convincing and unequivocal. E.A. 1/88, supra at 196 (per P. Shamgar). The amendment of Basic Law: Knesset, as interpreted by the Supreme Court, has thus lowered the standard for placing prior restraints on racist speech in the context of Knesset elections, as it no longer requires a "near certainty" that the racist election propaganda will actually endanger the public peace. Similarly, the Parties Law, 5752-1992, prevents registration of a political party on the same grounds provided for disqualification of a party's candidate list in Knesset elections.

622. At the same time, the Knesset amended its own by-laws, to forbid the submission of any legislative bills which, inter alia, are racist in content (Knesset By-laws, by-law 134 (c)).

623. The Kach movement was disqualified from running in three successive Knesset elections. In 1994, following the massacre of Muslim worshippers at the Tomb of the Patriarchs by a Jewish fanatic, the Government outlawed the Kach movement and its offshoot, Kahane Chai, even though they were not involved in the massacre itself.

624. Under the Second Television and Radio Authority Law, 1990 (sect. 46 (a) (2), the holders of concessions for cable television services may not broadcast any material containing racial incitement, and they bear a duty to ensure that none of their broadcasts will be liable to incite discrimination on grounds of religion, race, nationality, ethnicity, lifestyle or origin.

625. The defamation of any group as such, including national, racial or religious groups, is prohibited by law (Prohibition of Defamation Law, 1965, sect. 4). To the extent that such defamation, in each case, constitutes incitement to discrimination or hostility, then it arguably falls under the provisions of this article.

626. The Prevention of Terrorism Ordinance, 1948, section 4 (a), makes it an offence to publish, in writing or orally, any praise, support or encouragement to acts of violence that are likely to result in death or injury.

627. In practice, the laws described above, including those prohibiting incitement to racism and group defamation, are used sparingly, and only in the most extreme cases, so as not to infringe upon the freedom of expression.

628. In practice, the advocacy of racial, religious or national hatred contemplated under this article may often be controlled or prevented by the need to receive a permit to hold a public demonstration. The Israel Police has the authority to deny, restrict or place conditions on such a demonstration permit due to the likelihood of incitement or violence having a racial or religious cast. In such cases, the formal reason for denial of a demonstration permit will be a concern for violation of public order and security. Challenges to such denial of permits are discussed in the context of the right to freedom of assembly, under article 22.

Article 21 - Freedom of assembly

629. Although the right to peaceful assembly is not mentioned in any Basic Law, it has been recognized as among the fundamental freedoms deriving from the democratic character of the Israeli polity. H.C.J. 153/83, *Levi* v. *Israel Police Southern District Commander*, 38(2) P.D. 383, 398-399. As developed by the Supreme Court, the right includes the freedom of assembly, of procession and of demonstration, all of which involve the physical congregation of a group of people who wish to express, by speech or conduct, their views on a given issue in public. The Court has clarified in many decisions that the right to assembly, while not absolute, is to be enjoyed by all persons, regardless of the views they wish to espouse:

> "There are those who argue that the intellectual basis for this liberty is the desire to guarantee the freedom of speech, which in turn contributes to the discovery of the truth. Others maintain that at the root of this right lie the existence and functioning of the democratic polity, which is based on freedom of information and freedom of protest. Still others claim that the freedom of demonstration and procession are essential components of the general freedom of a person to self-expression and autonomy of thought ... It would appear that the freedom of demonstration and assembly stands on a broad ideological basis, at the centre of which is the recognition of the value of the human being, of his dignity, of the freedom given him to develop his personality, and the will to maintain a democratic form of government. By this freedom, a means of expression is given to those who cannot avail themselves of the official or commercial means of expression. It is thus accepted in our system of law, as in those of other enlightened democracies, that the right to demonstration and assembly holds a place of honour in the hall of fundamental human rights ... Freedom of expression and freedom of demonstration do not mean only the freedom to express things that are pleasant to the ear. [It is] not only the freedom of children with bouquets of flowers in their hands to march in the city streets, but also the right to march of persons whose views are not accepted, when the very fact of their marching is irritating and maddening ... Both are entitled to march, and their right is not related to the degree of approbation or anger that they arouse ..." *Levi* v. *Israel Police*, supra, 38(2) P.D. 393 at 398, 411.

630. In decisions handed down after enactment of Basic Law: Human Dignity and Liberty, the Supreme Court has indicated that the freedom of speech may be deemed to be included in the general guarantee of human dignity in section 2 of the Basic Law. It may thus be said that the right to peaceful assembly now has a definite, if implicit, textual footing in Israel's constitutional law. See, e.g., *Dayan* v. *Israel Police Jerusalem District Commander et al.*, 48(2) P.D. 456, 458.

631. The restrictions on the right to peaceful assembly may be found in the Police Ordinance [New Version], 5731-1971, and in the Penal Law, 5737-1977. Under section 83 of the police Ordinance and relevant Police standing orders, a demonstration will require a permit if at least 50 persons will participate, and if it involves either (a) an assembly out of doors in order to hear a speech or an address on a topic of political interest, or to discuss such a topic, or (b) an assembly out of doors in order to proceed together from one place to another. Thus, no license is needed if the meeting or procession involves fewer than 50 persons; if it takes place indoors, or if it is not devoted to listening to a speech or an address on a topic of political interest or to discussion of such a topic, no matter how many persons participate; or if the participants at an outdoor protest or vigil stand and hold signs, without hearing a speech or lecture on a political topic or discussing such a topic. To hold a meeting or a march without a permit where the law requires one, or to disobey the conditions stated in the license, is a criminal offence. (Police Ordinance, sect. 89).

632. The Penal Law defines an "unlawful assembly" as any gathering of three or more people - even if they have received a license to demonstrate - who conduct themselves in such a way as to give "persons in the neighbourhood" reasonable grounds to fear that the persons assembled will cause a breach of the peace, or that their assembly will "needlessly and without reasonable cause" provoke other persons to commit a breach of the peace (Penal Law, sect. 151). Participation in an unlawful assembly is punishable by up to one year's imprisonment, and the Police may order the dispersal of any such assembly.

633. Requests to hold an assembly or procession in the Knesset building or precincts are considered not by the police, but by the Speaker of the Knesset under the Knesset Building and Precincts Law, 5728-1968.

634. Once a request for a license to hold an assembly or procession is submitted, the district police commander may either agree or refuse to grant the license as requested, or he may grant the license subject to time, place and manner restrictions that he deems necessary and appropriate. The request must be filed at least five days prior to the day of the planned demonstration. The district commander is bound to take the following considerations into account when deciding on a permit application (Police Standing Order 12.01.06 - Licensing of Assemblies and Processions):

(a) In general, the commander may refuse the license only if there is substantial evidence showing a "proximate certainty" that holding the assembly or procession as requested will result in a breach of public security or public order, or a violation of other equally fundamental interests, and then only if the police cannot, with a reasonable effort, allot the forces

necessary to control public order and thus enable realization of the right to demonstrate. The "proximate certainty" standard for restricting the right to demonstrate due to danger to public order or security is the same as that adopted in Israeli law with respect to restraints on freedom of speech generally. In assessing the likelihood of a breach of public order or security, the Police may consider past experience with the group applying for the license;

(b) The views of the demonstrators or the subject of the lecture or speech are explicitly excluded from consideration;

(c) The police may refuse or restrict a license if there is reasonable basis to suspect that the demonstration will involve criminal offences such as rioting, incitement to rebellion or racism, incitement of people in the army to disobey a legal order, or incitement to any other offence;

(d) The fact that holding a demonstration would oblige the police to deploy personnel in order to preserve security and order, is not in itself sufficient cause to refuse a license. The police have a duty to allot personnel resources to enable the exercise of the right to peaceful assembly. Only in special circumstances, when needs of a higher priority do not enable the police to allocate the necessary personnel at the requested place and time, may the Police demand a change in the time, manner or place of the assembly. For example, in H.C.J. 1928/96, *Council of Settlements of Judea, Samaria and Gaza* v. *Amit* (not yet reported), the Supreme Court upheld the refusal of the Jerusalem District Police Commander to grant a license to a group that opposed the Oslo peace agreements from holding a procession that would pass down a major traffic artery and end next to the hotel where the President of the United States was staying at the time. Due to the unusually severe demands on Police personnel occasioned by the President's visit, as well as the increased security made necessary in the aftermath of several terrorist bombings, the Court ruled that the Police Commander was justified in demanding, as a condition for granting the license, that the demonstration take place away from the hotel where President Clinton was staying, or that the number of participants be limited;

(e) When necessary, the police must strike a balance between the right to demonstrate and the public's interest in unimpeded traffic. In general, the police will not have properly balanced these contending interests if it allows a demonstration at a time or on a route which frustrate the demonstrators' aim of attracting the attention of the public, such as allowing the demonstration when the streets are empty, or at a location where there are no passers-by;

(f) A license for a demonstration on private property will not normally be given without the owner's or custodian's consent. Private property rights will be respected even when the planned demonstration relates to a public figure, as, for example, when the Supreme Court upheld the refusal to grant a license to hold a demonstration opposite the Foreign Minister's private residence. H.C.J. 456/73, *Kahane* v. *Israel Police Southern District Commander* (unreported);

(g) The police should also consider whether the planned time and place of the demonstration would likely injure the "religious or traditional sensibilities" of the residents living nearby;

(h) The District Commander may not refuse to grant a permit unless the conditions, reservations and alternative solutions have been thoroughly examined with the aim of finding a way to allow the demonstration, and finding a proper balance between contending rights or values reflected in the time, place and manner of the demonstration (sect. 7 (a) (3), Police Standing Order 12.01.06).

635. The Supreme Court has upheld denial of a demonstration, on the grounds of a near certainty of substantial violation of public security or order, in the case of a protest against religious coercion to be held on the eve of the Jewish Sabbath at the entrance to an ultra-Orthodox neighbourhood in Jerusalem and opposite Orthodox academies, H.C.J. 606/87, *Marciano* v. *Israel Police Southern District Commander*, 41(4) P.D. 449; in the case of a procession by a group called the Temple Mount Faithful through the Old City of Jerusalem, and requests by the same group to hold a prayer assembly at the entrance to the Temple Mount, H.C.J. 292/83, *Temple Mount Faithful* v. *Israel Police Jerusalem District Commander*, 38(2) P.D. 449, H.C.J. 411/89, *Temple Mount Faithful* v. *Israel Police Jerusalem District Commander*, 43(2) P.D. 17; in the case of a planned demonstration opposite the Egyptian Embassy in Tel-Aviv, H.C.J. 496/85, *Servetman* v. *Israel Police Tel-Aviv District Commander*, 40(4) P.D. 550; and others.

636. Once a license to demonstrate is issued, the police bear an affirmative duty to maintain security during the demonstration and to protect those who participate in it, within the framework of its overall resources and priorities (sect. 9, Police Standing Order no. 12.01.06). As the Supreme Court held in this regard:

> "The force at the disposal of the police is indeed limited, and must be apportioned according to the order of priorities set by those responsible therefor, according to their overall responsibility under the Police Ordinance ... However, the above-mentioned setting of priorities must not be arbitrary, discriminatory or irregular. When setting the above-mentioned order of priorities, the right to demonstrate must not be left out. Furthermore, it is not right that one march should receive the necessary police protection, while another does not receive it just because of the ideological difference in the content of the demonstration. The police are not in charge of ideology. They must apportion their forces according to needs and not according to opinions. The argument that holding a gathering on the requested route constitutes 'a significant burden to the police, which would have to allot a large force, which would require special preparations' is not a proper argument. It is the function of the police to allot the manpower required to maintain normal existence, which of necessity includes various processions and demonstrations. The task of the police is to allot manpower to maintain democratic order, which includes the right to demonstrate; and therefore it is their duty to make special preparations therefor, and the 'significant burden' is not a reason to refrain from doing so. The question which the police must ask themselves is whether

all of the demands facing them at any one time can be met." H.C.J. 148/79, *Sa'ar v. Minister of Interior and Police*, 34(2) P.D. 169, 178-179.

637. In 1983, in the aftermath of an incident in which a demonstrator was killed by a hand grenade thrown by an onlooker, the Attorney-General and the Police Inspector General issued a joint policy statement, as follows: "Due to the danger to the foundations of the democratic regime from attacks on assemblies and demonstrations, priority will be given to combating hooliganism in this sphere, and the prosecution will act to expedite judicial procedures and demand that severe penalties be imposed on anyone found guilty of criminal behaviour against demonstrators." Prosecutorial policy in this matter has not changed. At roughly the same time, the Attorney-General also published detailed official guidelines for the police regarding the licencing of demonstrations and dispersal of gatherings ("The Freedom to Demonstrate", Guidelines of the Attorney-General 21.566, volume 3 (1 April 1983)).

638. Under the Attorney-General's guidelines mentioned above and police standing orders, State-owned property which is normally closed to the general public, such as buildings containing government offices or halls open only to persons on official business there, are deemed to be "private" property for the purpose of allowing demonstrations, and hence may be used as the site for an assembly only with the agreement of the State or its authorized representatives. On the other hand, State-owned areas open to the general public, such as roads, public parks, squares or open areas next to government offices, are by their nature suitable for holding assemblies, and normally the State is assumed to have agreed in advance to hold demonstrations at such sites.

639. If an assembly is or becomes illegal - that is, if the conditions of the licence are violated, or if a demonstration is held without a licence where one is required, or if there is reasonable fear of a breach of the peace as mentioned above and reasonable measures cannot prevent such a fear - then police personnel are authorized to take various steps against those suspected of having committed the illegality, in an ascending order of severity. First, the police should try, if possible, to prevent the offence and allow the holding of the demonstration legally, for instance, by asking the demonstrators to refrain from blocking a road or to return to the permitted route of the procession. If the demonstrators commit an offence, such as blocking a road and disturbing the traffic, without a license or against the stipulations in the license, a police officer is authorized to ask them to disperse; if they resist, the police are permitted to use a reasonable amount of force in order to overcome those resisting them in the fulfilment of their duty. In addition, under sections 153 and 154 of the Penal Law, if three or more people riot, or there are grounds to fear that they are about to riot, a police officer may order them to disperse and if they resist, may do anything required to disperse them. Of course, should a police officer have reasonable cause to suspect that a person has committed a criminal offence, including the offence of illegal assembly, he or she is authorized to demand that the person accompany him to a police station, or to arrest the person.

640. As mentioned under article 6, the Israel Police began compiling separate statistics regarding the excessive use of force by police personnel at

demonstrations during the latter part of 1995. In 1996, 32 complaints for excessive use of force at demonstrations were filed; as of the submission of this report, statistics are not yet available regarding the outcome of disciplinary or criminal proceedings undertaken in those cases.

641. To assist in the apprehension and prosecution of persons who commit offences at demonstrations, as well as of police personnel who may use excessive force against demonstrators, and in general to help in supervising and improving the handling of demonstrations, the police enacted standing orders allowing for video recording of assemblies (Standing Order 14.02.10).

Article 22 - Freedom of association

642. **Introduction**. The freedom to associate with other persons or groups in order to pursue any lawful aim has long been recognized in Israel as a fundamental civil right and a cornerstone of any democratic regime. See, e.g., M.F.H. 16/61, *Companies Registrar* v. *Kardosh*, 16 P.D. 1209, 1220; H.C.J. 124/70, *Shemesh* v. *Companies Registrar*, 25(1) P.D. 505, 509. As with the other basic freedoms to which it is related - speech and expression, assembly, thought and conscience - the freedom of association is not absolute, and must be reconciled in appropriate circumstances with other legitimate fundamental interests of the society, such as the maintenance of social order, public security, or the very existence of the State. H.C.J. 507/85, *Tamimi* v. *Minister of Defence*, 41(4) P.D. 57, 59. As a general matter, the freedom of association may be thus restricted only by express legislative authorization. The one exception to this rule in Israel's history involved the disqualification of a party running for election to the Knesset on the grounds that its purpose was to work towards the elimination of the State. E.A. 1/65, *Yardor* v. *Chairman of the Central Elections Committee for the Sixth Knesset*, 19(3) P.D. 365. Since then Basic Law: Knesset was amended to provide explicitly for disqualification of a Knesset list on such grounds, as discussed in detail under article 25. Furthermore, although the Supreme Court has not yet ruled on the issue, the freedom of association may fall under the ambit of Basic Law: Human Dignity and Liberty, enacted in 1992; as a consequence, any restriction on this freedom must not only be by express authorization of the Knesset, but also for a legitimate purpose and to an extent no greater than necessary to achieve such purpose.

643. There are three types of statutory restrictions on the freedom to associate in Israeli law: the first type is found in statutes that regulate the formation and operation of corporations, cooperative associations and the like; the second class of restriction involves statutes which aim to prevent the formation or activity of subversive organizations, including terrorist groups; the third involves direct or indirect restrictions on the freedom to form professional associations in certain fields or the requirement that certain professionals belong to such an association. These different statutory limitations shall be discussed in turn below.

Corporations, cooperative societies and *Amutot*

644. The Companies Ordinance [New Version], 5743-1983, which is largely similar to the ordinance enacted during the British Mandate, gives the Minister of Justice "absolute discretion" to allow or disallow the

incorporation of a company (sect. 17 of the Ordinance). The Supreme Court, however, has held that the Minister's discretion in this regard, which is exercised in practice by the Companies Registrar, must be used to promote the purpose for which such discretion is granted by the Ordinance. For example, the Court has annulled a refusal by the Companies Registrar to register a company whose members had been convicted previously of publishing without a permit a newspaper which had been found to include incitement against the State; the Registrar based his refusal on the grounds that the members of the company were likely to use the company to spread views endangering State security. The Court held that such a prospective evaluation of the company's activities was not a proper exercise of the Registrar's discretion, and allowed the company to be registered. H.C.J. 241/60, *Kardosh* v. *Companies Registrar*, 15 P.D. 1151; M.F.H. 16/61, *Companies Registrar* v. *Kardosh*, 16 P.D. 1209. The Registrar may also refuse to register a company under a particular name which is "likely to violate public policy or public feelings" (sect. 36 (a) (3) of the Ordinance), or which was chosen by its founders for an improper or fraudulent purpose. These latter restrictions, however, do not affect the right to incorporate as such, but rather to the name chosen by the company.

545. Non-profit organizations in Israel were regulated until 1980 under the Ottoman Law of Association, No. 121 of 1327 (1909), as amended by Mandatory and Israeli legislation. "Ottoman associations" under that law needed no permit as a condition for their formation (sect. 2), but had merely to notify the Government of their formation, purposes and by-laws. The only substantive restrictions upon the formation of Ottoman associations were that they could not have any purposes contrary to law or public morality; they could not aim to violate public order, to change the political regime in the State; and they could not be based on national or racial distinctions. Minors and persons convicted of a felony were not allowed to become members of an Ottoman association. In 1980 the Ottoman Law of Associations was replaced by the *Amutot* Law, 5740-1980; non-profit organizations established thereunder are called *amutot* (sing. *amutah*). The *Amutot* Law empowers the *Amutot* Registrar to refuse to register an *amutah* if "one of its purposes is to negate the existence of the State of Israel or its democratic character, or if there are reasonable grounds to conclude that the *amutah* will serve as a cover for illegal activity" (sect. 3 of the *Amutot* Law). To justify a claim that an *amutah* aims to negate the existence of the State or its democratic character, it would appear, based on Supreme Court judgements interpreting the parallel provisions in Basic Law: Knesset, that the Registrar must show by "convincing, clear and unequivocal evidence" that the forbidden aim is in fact central to the *amutah* or to its founders; that the *amutah* was founded to pursue the forbidden aims; and that the expression of such aims by the founders of the *amutah* is not only clear but extreme. With regard to the other ground noted above for refusal to register an *amutah*, the Supreme Court has interpreted "reasonable grounds" strictly, to require that the Registrar show by convincing, verified evidence, rather than mere speculation, that there exists a "proximate certainty" that the *amutah* will in fact be used as a cover for unlawful activity (C.A. 1282/93, *Amutot Registrar* v. *Kahane*, 47(4) P.D. 100). It may be noted that prior to the enactment of the Parties Law, 5752-1992, discussed below, political parties were governed either by the *Amutot* Law or by the Ottoman Law of Association, depending on when they were formed.

646. The *Amutot* Law empowers the District Courts to order the winding up of an *amutah* if it, or its purposes, are aimed at the negation of the existence or the democratic character of the State; if it violates the law or its own by-laws; if it is unable to pay its debts; or if "reasons of justice or equity so require" (sect. 49). A similar provision in the Companies Ordinance is used to wind up companies for reasons related to the law of companies, and not to restrict freedom of association (see U. Procaccia, **The New Companies Law in Israel** (Jerusalem, 1989), 534-535); it may be assumed that the provision in the *Amutot* Law would be applied in a similar manner, especially in view of the enactment of Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation.

647. "Cooperative societies", another form of association recognized under Israeli law, are similar to corporations, except that their purposes must involve "the cultivation of savings, self-help and mutual assistance between persons with common economic interests, in order to bring about an improvement of their living conditions, business affairs and methods of manufacture, or a society formed in order to facilitate the activities of such societies" (sect. 4 of the Cooperative Societies Ordinance, 1933). The Cooperative Societies Registrar may refuse to register a society "without giving any reason for such refusal" (sect. 9 (1) of the Ordinance); however, if the Registrar does give reasons for a refusal to register, the courts may review the validity and reasonableness of his reasoning under principles of administrative law.

648. Israeli law allows persons to form partnerships under the Partnerships Ordinance [New Version], 5735-1975, which are registered upon fulfilment of certain technical requirements, such as notification to the Registrar regarding the name, address and nature of the partnership. No administrative authority has the power to prevent registration of a partnership on any substantive ground.

649. The activities of each of the types of associations discussed above are regulated by the appropriate Registrar pursuant to legislation. In general, such associations must file annual reports to the Registrar, must comply with other technical regulations regarding, for example the proper use of the organization's name or financial auditing, and may not pursue illegal objectives or activities. They may be wound up or liquidated, inter alia, in the event of financial insolvency or non-compliance with technical or legal requirements. The ideological or political content of the association's activities is not properly the subject of administrative review, except in those cases where an *amutah* aims to negate the existence or democratic character of the State.

Subversive organizations

650. Several statutory provisions aim to prohibit the formation and operation of subversive organizations. Sections 145-150 of the Penal Law, 5737-1977, adopt earlier Mandatory provisions regarding unlawful associations. Under section 145 of the Penal Law, "unlawful associations" are defined as

"(1) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates, incites or encourages any of the following unlawful acts:

"(a) the subversion of the political order of Israel by revolution or sabotage;

"(b) the overthrow by force or violence of the lawful government of Israel or of any other state, or of organized government;

"(c) the destruction or injury of property of the State or of property used in commerce within the State or with other countries;

"(2) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages the doing of any act having as its declared or implied object sedition within the meaning of article One [of the Penal Law];

"(3) any body of persons which does not notify its rules as required by law or continues to meet after being dissolved by law;

"(4) any body of persons, incorporated or unincorporated, which is or appears to be affiliated with an organization which advocates or encourages any of the doctrines or practices specified in this section;

"(5) any branch, centre, committee, group or faction of an unlawful association and any institution or school managed or controlled by it."

651. Membership in such an unlawful organization is punishable by imprisonment for one year. The Penal Law also makes it an offence to solicit contributions to such an association, to contribute money to it, to publish or transmit writings for or in the interests of such an unlawful association, or to advocate or encourage the acts that constitute an unlawful association under section 145, with maximum punishments ranging from six months to three years' imprisonment. While commentators have noted the potential infringement on the freedom of association occasioned by section 145 (4) above, which does not require those affiliated with an unlawful association to have actual subversive intent (see, e.g., A. Rubinstein, **The Constitutional Law of the State of Israel** (4th ed., Tel Aviv 1991), p. 813, n. 33), no indictment filed under these provisions has been appealed to the Supreme Court.

652. The second set of statutory prohibitions against seditious associations is found in sections 84-85 of the Mandatory Defence (Emergency) Regulations, 1945. These regulations are stricter than the above provisions of the Penal Law both in scope and in terms of the punishments they prescribe. Under Regulation 84, the Minister of Defence may declare any body of persons to be an "unlawful association" if it incites or encourages the overthrow by force or violence of the political order or Government of Israel; the bringing into contempt or arousal of disaffection against the Government or its ministers in their official capacity; the destruction of or injury to government property; or acts of terrorism directed against the Government of Israel or its servants.

653. Finally, the Prevention of Terrorism Ordinance, 5708-1948, which was enacted shortly after the establishment of the State, defines a "terrorist organization" as a body of persons which in its operations uses acts of violence which are liable to cause the death of a person or injure him, or threatens such acts of violence. Activity in a terrorist organization is punishable by 20 years' imprisonment; membership in such an organization carries a maximum sentence of five years' imprisonment. The Ordinance also forbids support or encouragement of terrorist organizations, possession of propaganda of such an organization, allowing one's property to be used by a terrorist organization or its members, or identification with such an organization through the unfurling of a flag, display of a symbol or slogan or singing of a hymn which clearly indicates such identification or support for a terrorist organization. A provision forbidding contacts with members of declared terrorist organizations was repealed following the signing of the Declaration of Principles by Israel and the PLO. In addition to specifying methods of proving that a group of persons is a terrorist organization, the Ordinance empowers the Government to declare a given group of persons as a terrorist organization, and such notice is prima facie proof in any legal proceeding that that group is in fact a terrorist organization "unless the contrary is proved". The Prevention of Terrorism Ordinance has been employed primarily against Palestinian organizations which have engaged in terrorist activity against the Israeli population; but it has also been employed against Jewish organizations, such as the Lehi (Stern Gang) immediately after the establishment of the State, and, more recently, against the Kach and Kahane Chai movements.

Trade unions and professional associations

654. **International conventions**. Israel has ratified ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, of 1948, and Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, of 1949. While these conventions have not formally been made a part of Israel's internal law, they have had a significant influence on the development of Israeli law and practice regarding the right to organize, the activity of trade unions and collective bargaining agreements. In fact the Collective Agreements Law, 5717-1957, was enacted specifically on the basis of the above conventions, and gives effect to their substantive provisions.

655. **The right to form trade unions**. The right of workers and employers to organize in trade unions for the promotion of their interests is not yet expressly articulated in Israeli legislation, although it is firmly entrenched in the decisional law and is an underlying presumption of existing collective bargaining legislation, as detailed below. A draft Basic Law: Freedom of Expression and Association, a previous version of which has been approved by the Ministerial Committee on Legislation, would give firm written constitutional status to the right to organize, as provided in sections 6 and 7 of the draft Basic Law:

> "6. Every citizen or resident of the State has the freedom to associate.

"7. (a) Employees are entitled to organize by their choice in employees' organizations, and employers are entitled to organize by their choice in employers' organizations; an employees' organization may engage in a collective agreement with an employer or an employers' organization.

"(b) Employees are entitled to strike for the protection of their rights and for the promotion of their interests as employees.

"(c) Financing of the activities of employees' organizations or employers' organizations with the participation of the employees or the employers, and the manner of collection from them, may be determined in a law or pursuant thereto.

"(d) The rights under this section shall be respected according to the principles of labour law in Israel."

656. In the current absence of such an explicit statutory right to organize, or legislation which regulates the formation of and conditions for joining trade unions, the National Labour Court has established that the freedom of association in trade unions and the freedom to engage in collective bargaining, as guaranteed in ILO Convention Nos. 87 and 98, apply to all workers in Israel. L.C.A. 35/5-1, *Markovitz* v. *Hahistadrut Haclalit et al.*, 6 P.D.A. 179. As the Court stated:

"The fundamental right of association carries special meaning in the realm of labour relations ... [in which] this right has been consolidated as a 'right to organize' and as a right to 'freedom of association', which complement one another ... The right to freedom of association is the right of workers and employers to establish organizations, and, subject only to the regulations of the organization in question, to join the organization which they choose without need of prior permission from the governmental authorities. One of the basic principles underlying the freedom of association is the right of the organization to determine its constitution, subject to the laws of the State, to the extent that those laws do not contravene the principle of freedom of association."

657. The right to organize in trade unions thus includes the right to form a union, the right to join or not to join a union, and the freedom of the union's operation.

658. **Collective agreements and the attributes of authorized trade unions**. Section 1 of the Collective Agreements Law, 5717-1957, defines a collective agreement as "an agreement between an employer or employers' organization and an employees' organization, made and submitted for registration under this Law, with regard to hiring a person or terminating his employment, terms of employment, labour relations, rights and duties of the organizations which are parties to the agreement, or part of these matters."

659. As a general rule, any group of workers may form a trade union; however, to be legally empowered to act as a union, it must meet a series of recognized

characteristics of a workers' organization and must be "representative". The Labour Courts have developed the following tests for identifying an organization as a legally empowered trade union:

(a) Stability - the organization must have been created in such a manner that it will continue existing without time limit, or at least for a long period, and not merely for a particular bargaining session;

(b) By-laws - the organization must have by-laws regulating its aims, its institutions and their powers, conditions for membership, and the like;

(c) Personal and voluntary membership - a trade union must be based on the free consent of each individual worker to become a member or to forfeit membership;

(d) Workers' representation - the vast majority of a union's members must be employees;

(e) Aims - first and foremost among a trade union's aims must be to engage in collective bargaining with the employer for the purpose of fixing working conditions and workers' rights within collective agreements;

(f) Independence - a trade union must be independent from the employer, and must be free to operate without external intervention;

(g) Internal democracy - a trade union must respect basic democratic principles such as periodic, free and equal elections of representatives, in which all member workers participate, public accountability of the representatives, freedom of speech for the employees and maintenance of principles of non-discrimination.

660. Representation requirements for trade unions are defined in the Collective Agreements Law, 5717-1957, according to the type of agreement involved. The Law (sect. 2) distinguishes between a "special collective agreement", which relates to a particular employer or place of employment, and a "general collective agreement", which relates to branches of employment in the entire country or in a distinct area. In both types of agreements, the union must represent "the greatest number of organized employees to whom the agreement is to apply". In the case of a general agreement, representation is a function purely of membership in the union; in the case of special agreements, representation may be determined either by membership or by other means, such as a special decision by the workers; in any case, the union must represent not less than one third of the total number of employees to whom the special agreement is to apply (sects. 3 and 4 of the Law).

661. All rights conferred by a collective bargaining agreement on employees as individuals may not be waived (sect. 20, Collective Agreements Law), nor may a collective agreement derogate from any rights granted to employees by law (sect. 21).

Limitations on professional associations

662. The right to form trade unions may be restricted narrowly with regard to specific classes of workers or professionals when an overriding public interest justifies doing so. For example, section 93 B of the Police Ordinance [New Version] prohibits the formation of a union by police personnel, although they may join regular trade unions; and standing orders of the Israel Defence Forces General Headquarters, which have the status of law, forbid military personnel from forming their own union. Judges traditionally do not consider themselves free, as a matter of judicial ethics and policy, to organize in a union, even though they are not prohibited by legislation from doing so. Other civil servants, however, with the exception of police employees as noted above, are subject to no restrictions regarding their right to organize, and they have done so.

663. Certain professional associations, such as the Israel Bar Association, are created and function pursuant to Knesset legislation as the sole professional association to which members of those professions may belong. Thus, while the freedom of association of the profession as a whole is maintained, the right of individual members of those professions to choose their preferred form of organization and its rules is limited in the interest of enabling uniform oversight of their qualifications, activity and ethical conduct.

Structure and membership of trade unions

664. **The Histadrut**. Most salaried employees in Israel are organized in trade unions. The vast majority of such employees are members of the New General Federation of Labour, known as the Histadrut, an organization which predated the establishment of the State. Under the Histadrut by-laws, any worker aged 18 or over who is not a member of another labour organization may become a member. The Histadrut represents salaried employees in industry, agriculture and service industries, including public sector employees, musicians, social workers, pharmacists, actors and directors, employees in the printing and binding, diamond and textile, chemical and petrochemical, plastics, building, garment and other industries, physiotherapists and other therapists, tour guides, nurses, academics in the humanities, biochemists and microbiologists, engineers and technicians, clerks in a broad range of institutions, hotel employees, metalworkers and electricians, food service employees, housewives, retirees, students and others.

665. The highest executive institution of the Histadrut is its National Conference, and its House of Representatives is the primary legislative organ. The members of both bodies are elected in proportional and secret elections from the lists of candidates associated with various political parties. All of the major political parties are represented. Until 1994, the Labour Party maintained a majority in the National Conference; currently, the Conference is controlled by a coalition of Labour and a new list which won the 1994 elections. The Secretary-General of the Histadrut has always been a Knesset member from the Labour Party, except for a period of roughly two years between 1994 and 1996.

666. Histadrut trade union activities are conducted through a three-level institutional structure: the workers' committees in each plant, which represents all workers at the plant; a local or regional workers' council; and the national unions, organized by profession, occupation or industry. There are currently 37 such national unions operating under the Histadrut umbrella. Each national union is empowered to sign collective agreements on behalf of the Histadrut.

667. The activities of the Histadrut have extended beyond those of a typical union, including mutual aid, culture and education. As the dominant workers' organization in the country, the Histadrut has also traditionally been active in shaping the social security system and the labour economy itself. General collective agreements between the Histadrut and the Coordinating Council of Economic Organizations (which represents private sector employees) or the Government (for most public sector employees) are the most influential instruments shaping labour relations and working conditions in Israel today, especially if such agreements are extended to other groups or classes of employees not covered by the original agreement, which occurs frequently.

668. Until 1995, membership in the Histadrut was linked to membership in the General Health Fund, the largest provider of health services in the country, such that members of the General Health Fund became members of the Histadrut, even if they were not employees. With the inception of the new model of health care under the National Health Insurance Law, 5755-1995, the link between the Histadrut and the General Health Fund was severed, resulting in a certain decrease in Histadrut membership. Although the Histadrut no longer discloses exact membership figures, there is no doubt that its ranks dwarf those of all other trade unions taken together.

669. **Trade unions other than the Histadrut**. Other labour unions include the Israel Medical Association, the National Union of Israeli Journalists, the Organization of Upper School, Seminar and College Teachers, the organizations for the Teaching Faculty at universities, and the National Organization of Workers. Some of these other unions overlap in membership with the Histadrut, in which case they generally divide between them the authority to bargain with employers over different matters. Certain unions which are organized formally within the Histadrut itself enjoy a high degree of autonomy, such as the Union of Engineers and Architects.

670. In addition, there are a few other unions of general character, which have a relatively small membership and much less political and social influence than the Histadrut. The largest such organization is the National Workers' Federation, which propounds a platform with nationalist political overtones, in comparison with that of the Histadrut, which retains a fair degree of the socialist tenor of its early days. The National Workers' Federation does not publish membership figures, and for the most part has not been successful in becoming the representative organization in places of employment.

671. Several small labour organizations with a religious orientation generally have come to agreements with the Histadrut, which grant them representation in particular places of employment.

672. **Individual freedom to join a trade union**. Under principles developed in the case law, no employee in Israel may be forced to join a trade union, and every employee may resign from union membership. L.C.A. 1975/5-1, *Markovitz v. Histadrut*, supra; L.C.A. 1985/5-2, *Histadrut v. Paz Senior Workers' Association*, 14 P.D.A. 367, 385. Collective agreements generally operate on the "agency shop" principle, under which the employer recognizes the labour organization with which the agreement is made as the authorized representative for collective bargaining, and agrees that the collective agreement will apply to all employees, whether or not they are members of the representative organization, but the individual workers still are free to choose whether or not to join the union. Non-member employees generally pay a "trade union service fee", which is considered a fair contribution in return for services, and by law may be deducted from the employee's wages (Wage Protection Law, 5718-1958).

673. **Freedom of operation of trade unions**. In addition to general civil liberties, such as the freedom of expression and the freedom from arbitrary arrest or imprisonment, which apply as a matter of course to the activities of trade unions in Israel, the procedure for recognition of collective agreements and the limitation of interference by the State are an important aspect of the ability of trade unions to operate freely. The Collective Agreements Law, 5717-1957, provides that a collective agreement need only be filed to be registered, giving the registrar no discretion on the matter. Furthermore, a challenge to representation by a trade union may be initiated only by another employees' organization (section 6 of the Collective Agreements Law).

674. On the other hand, as collective agreements have the effect of law for the workers to whom they apply, the agreements may not contravene the law or fundamental public interests. For example, the Labour Court has held that principles of general contracts law, such as the duty of good faith in contract negotiations, or the grounds for rescission, apply to collective bargaining and agreements.

675. Because the Histadrut developed as a more or less centralized labour union prior to the establishment of the State, and was fully in place far before most employers or Israeli labour legislation came into existence, many of the struggles common to employees in other countries in attempting to form unions have not presented themselves to any significant extent in Israel.

676. **The right to strike**. As with the right to form trade unions, Israeli legislation does not explicitly confer the general right of employees to strike or the right of employers to stage a lock-out. These rights have been affirmed by decisions of the Labour Courts, and are protected and regulated by the Settlement of Labour Disputes Law, 5717-1957. Under section 3 of the Settlement of Labour Disputes Law, the parties in a labour dispute between an employer and all or some of its employees are the employer and the labour organization representing most of the employees affected by the dispute, or, in the absence of such a labour organization, the representatives elected by a majority of the employees. The representative employees' union must give formal notice of its intent to strike at least 15 days in advance; the same rule applies to employers who intend to stage a lock-out. Employees who participate in a strike duly called by the representative workers' organization are exempt from liability for breach of their employment

contract, including their obligations under a collective agreement, or from liability in tort for causing the employer or others to breach contractual relations. Collective Agreements Law, section 19; Civil Wrongs Ordinance [New Version], section 62 (b). The strike only suspends the labour contract, but does not constitute grounds for its termination. In addition, a duly called strike does not interrupt continuity of employment for the purposes of calculating benefits such as pensions, severance compensation, annual leave and veterans' rights. The Employment Service may not interfere with strikes, and is prohibited from referring potential employees to replace striking workers, except in the case of unprotected strikes in the public sector (sect. 44 of the Employment Service Law, 5719-1959).

677. The right to strike extends to economic disputes involving the determination of new employees' rights in collective bargaining, as opposed to "legal" disputes regard ng the enforcement of rights which have been determined in the past, for which the proper remedy lies in enforcement proceedings before the Labour Courts. L.C.A. 31/4-4, *Committee of Employees of the Cable and Electric Wire Company Ltd.* v. *Cable and Electric Wire Company Ltd.*, 4 P.D.A. 122, 134.

678. **Restrictions on the right to strike**. The Knesset has imposed special limitations on the right to strike of civil servants, local government employees, health service employees, educational personnel, and employees involved with the production or supply of gasoline, water, electricity and telecommunications. Any strike by such employees that occurs while a collective bargaining agreement is in force will be "unprotected" and illegal, unless it does not relate to a dispute over wages or benefits, and it is approved by the central management of the union. Even if there is no collective bargaining agreement in force, a strike by such employees will not be "protected" unless it is duly approved by the authorized employees' organization. Unprotected strikes expose employees to liability for breach of their employment contract and causing breach of contract by their employers. In the event of a partial unprotected strike by such public sector employees, the Law establishes a special procedure under which the employer must apply to the Labour Court for an order declaring the existence of a partial, unprotected strike, at which time the employees become entitled to receive half of their normal wages. Afterwards, the employer or employee may apply to the court for payment of any differential in wages, based on work actually performed (sect. 37 of the Dispute Resolution Law).

679. Collective agreements themselves often contain provisions limiting the right to strike. Moreover, the Labour Courts have held that collective agreements contain an implicit presumption that the employees' organization has obligated not to strike. Unless the collective agreement indicates otherwise, a strike conducted during the period of a collective agreement will generally be deemed unlawful, so long as the employer has fulfilled its obligations under the agreement.

680. Trade unions also often provide, in their constitutions or by-laws, for certain obligatory procedures that must be followed prior to staging a strike. For example, the constitution of the Histadrut requires an initial series of consultations and voting procedures, involving the national union

representatives, local workers' committees and the Histadrut Workers' Council, before declaring a strike. Failure to comply with these preliminary procedures will make the subsequent strike unlawful.

681. **Criminal sanctions against coercive behaviour**. The Penal Law, 5737-1977, protects members of either side of a labour dispute from violent or threatening interference. Section 164 of the Law makes each of the following acts punishable by imprisonment for one year, when done in the context of a labour dispute and with intent to compel another person to do an act which he or she is not legally bound to do, or to abstain from any act which he is entitled to do:

(a) Using violence against or intimidating another person or his wife or children, or injuring his property;

(b) Persistently following such a person about from place to place;

(c) Hiding any tools, clothes or other property owned or used by such other person or depriving him of or hindering him in the use thereof;

(d) Watching the house or other place where such other person resides or works or carries on business or happens to be, or the approach to such house or place, or prevents access thereto;

(e) Following such other person in a disorderly manner in any street or road.

However, the Penal Law expressly allows a person, on behalf of any of the protagonists in a labour dispute, to seek peacefully to obtain or communicate information or to persuade persons to work or to abstain from working (sect. 64).

682. **Compliance with ILO conventions**. Israel submitted its most recent report under ILO Convention No. 87 with respect to the period 1994-1995, and responded separately to General Direct Request 1995 bis of the Committee of Experts under that Convention by referring to the provisions of section 19 of the Collective Agreements Law, 5717-1957, discussed above. Israel's legal protections of the freedom of association and the right to organize are fully in accord with the provisions of ILO Convention No. 87. Israel's most recent report under ILO Convention No. 98, and relating to the years 1995-1996, was submitted in December 1997. The substance of Israel's responses to questions submitted by ILO supervisory bodies in recent years in the context of reporting under the above two conventions is included in the discussion under this article. No further comments or special direct requests have been forwarded to Israel by ILO supervisory bodies under those conventions in at least a decade.

683. **Stay-at-work orders**. In the past, the Government and its ministers exercised their broad emergency powers under section 9 of the Law and Administration Ordinance, 1948, to issue "stay-at-work" orders against strikes by workers deemed to provide essential services. These stay-at-work orders typically do not entail any attempt to resolve the labour dispute itself, but rather require some workers - generally only a small number from among the

participants in a strike - to remain at work in order to prevent interruption of the most essential services. With the entering into force of the amended Basic Law: Government, in June 1996, the scope of governmental emergency powers is substantially narrowed: only the Government as a whole, not individual ministers, may enact emergency regulations, and such regulations or orders must not exceed what is actually required by the circumstances of the emergency at hand. It may be expected that henceforth the Government will employ its emergency powers sparingly, and only when the interruption of truly crucial services may damage the State's vital interests.

684. **Frequency of strikes**. The following table shows the frequency and scope of strikes and lockouts in Israel over a period ending in 1994.

Table 15. Strikes and Lock-outs, 1960-1994

Year	No. of slow-downs	No. of strikes and lock-outs (excluding slow-downs)	No. of persons involved in strikes and lock-outs	Work days lost
1960		135	14 420	49 368
1965		288	90 210	207 561
1970		163	114 941	390 260
1971		169	88 265	178 621
1972		168	87 309	236 058
1973	54	96	122 348	375 023
1974	49	71	27 141	51 333
1975	62	117	114 091	164 509
1976	76	123	114 970	308 214
1977	57	126	194 297	416 256
1978	55	85	224 354	1 071 961
1979	97	117	250 420	539 162
1980	54	84	91 451	216 516
1981	59	90	315 346	782 305
1982	79	112	838 700	1 814 945
1983	47	93	188 305	977 698
1984	74	149	528 638	995 494
1985	64	131	473 956	540 232
1986	92	142	215 227	406 292
1987	89	174	814 501	995 546
1988	93	156	327 193	516 071
1989	58	120	209 841	234 073
1990	75	117	571 172	1 071 279
1991	52	77	38 776	97 923
1992	64	114	211 833	386 658
1993	40	73	462 208	1 636 866
1994	38	75	106 047	792 533

In view of Israel's relatively small population (approximately 5.8 million), the above figures demonstrate how extensively employees in Israel have made use of their right to strike.

Political parties

685. The discussion of the registration and activity of political parties in this and the following sections should be read in conjunction with the discussion of the right to be elected under article 25.

686. The right to organize political parties is recognized in Israel as an important facet of the freedoms of speech and association (E.A. 2/84, *Neiman v. Central Elections Committee of the Eleventh Knesset*, 39(2) P.D. 225). In 1992, the Parties Law, 5752-1992, which regulates the formation and activities of political parties, was enacted as part of a broader electoral reform which included the direct election of the Prime Minister and other amendments to Basic Law: Government. Prior to the enactment of that law, political parties were regulated by the laws relating generally to non-profit organizations, either as Ottoman associations or *amutot*, as noted above; there was no registration procedure for "political parties" as such, as the Elections Law speaks only of "candidate lists", and so it was not necessary to associate as a "political party" in order to participate in national or local elections, or for a Knesset faction to receive public funding under the Party Financing Law. With the enactment of the Parties Law, only registered political parties may submit candidate lists for election to the Knesset, only a representative of a registered party may run for the office of Prime Minister, and public funding is given only to registered parties which run for election. Existing political parties were required to register under the new law within six months of its enactment. As of the submission of this report, there are 30 registered political parties in Israel, including 19 parties which are represented in the Fourteenth Knesset, either alone or in combined factions with other parties.

687. Under the Parties Law, a political party is defined as "a group of persons which has associated to promote lawfully political or social aims and to bring about their representation in the Knesset by elected representatives" (sect. 1); the law thus does not apply to political organizations operating purely at the local level, or, apparently, to those which seek to realize their aims outside of the parliamentary process. Any group of at least 100 persons may organize as a political party, according to a registration procedure which is similar to that of non-profit organizations generally: the application must state the name of the proposed party, its purposes, the names and other basic information regarding its founders, and a set of proposed by-laws (sect. 4). The by-laws must include, inter alia, conditions for acceptance of new members, as well as for their suspension or ejection; members' rights and duties; arrangements for disciplinary proceedings and sanctions; the powers of branch offices; the functions, composition and manner of operation of party institutions; and the method of choosing candidate lists for Knesset elections (sect. 14). Notice of the application for registration is given to the Central Elections Committee, to representatives of all Knesset factions or candidate lists, and is published in the Official Gazette and newspapers.

688. Any citizen residing in Israel may file an objection to the registration of a political party within 30 days after the notice of application has been published (sect. 6 (a)). The Parties Registrar, appointed by the Minister of Justice, is empowered to rule on these objections, and his decisions are

appealable by leave to the Supreme Court. Ultimately, the Parties Registrar decides whether or not to approve registration of the party; any refusal to register a party must first be approved by the Supreme Court (sect. 6 (d)). The scope of the Registrar's power to refuse to register a party for non-compliance with technical registration requirements, such as inclusion in the by-laws of all matters enumerated by the Law, is not entirely clear from the wording of the Law itself, and has not yet been reviewed by the Supreme Court. The law also provides that a party may not be registered under a name which is likely to be confused with that of a current or previously existing party, to be misleading generally or to "violate public policy or public feelings". Here, too, the scope of the Registrar's powers is not yet entirely clear: while it would appear that the Registrar may actually refuse to register a political party under a particular name which, in his opinion, falls under the prohibitions noted above, one may assume, based on judicial interpretation of similar powers given to the Companies Registrar and the *Amutot* Registrar, that such powers will be construed narrowly, and must be balanced against the fundamental right to form political parties, especially if the decision whether or not to register a party is made relatively close to a Knesset election.

689. As mentioned under article 25, the Parties Registrar may refuse to register a political party if, by its purposes or actions, it may be deemed, expressly or implicitly, to negate the existence of the State of Israel as a Jewish and democratic State; to incite racism; or if there is reasonable basis to conclude that the party will serve as a cover for illegal activity (sect. 5). Since enactment of the Law in 1992, the Registrar has not refused to register any political party. Petitions against the registration of two different political parties, one Arab and one Jewish, were rejected by the Supreme Court. M.L.A. 2316/96, *Isaacson* v. *Parties Registrar* (not yet reported); M.L.A. 7504/95, *Yasin* v. *Parties Registrar* (not yet reported). Although the Court has not yet ruled squarely on the issue, it would appear that these substantive grounds for refusal to register a political party shall be interpreted very narrowly, as are the parallel provisions in Basic Law: Knesset and the *Amutot* Law, and shall be upheld only in the most extreme instances. See, e.g., H.C.J. 5364/94, *Welner* v. *Chairman of the Israel Labor Party* (not yet reported). Reference is made to the discussion of those parallel provisions in Basic Law: Knesset under article 25 of this report, and under the *Amutot* Law in this section. While the Parties Law, on its face, does not clarify whether a party may be stricken from the register by court order if it is found later on to be pursuing any of the prohibited aims mentioned above, the parallel provision in Basic Law: Knesset gives such authority to the Central Elections Committee and the courts with regard to parties which seek to participate in a Knesset election.

690. **Controls on activity of political parties**. Political parties have a dual character: they are at once voluntary associations, subject to the provisions of private law, and "constitutional" entities many of whose actions are subject to review under norms of public law. H.C.J. 1635/90 *Zharzhevsky* v. *Prime Minister*, 45 (1) 749, 836. At least in matters having a public dimension, government authorities, including the courts, will display a reluctance to intervene in the activities of a party, so long as it does not violate its status as "public fiduciaries". See H.C.J. 5364/94, *Welner* v. *Chairman of the Israel Labor Party*, supra (per D.P. Barak). For example, the

Supreme Court has held that coalition agreements between political parties must be made public, in order to give voters a chance to gauge their support of the parties involved (H.C.J. 1601/90, *Shalit* v. *Peres*, 44 (3) 353); and the Court will nullify such coalition agreements if they are illegal or patently violate public policy (H.C.J. 1635/90, *Zharzhevsky* v. *Prime Minister*, supra.) Recognizing the public character of political parties, the Parties Law, 5752-1992, makes them fully subject to audit by the State Comptroller in matters related to management of financial affairs and compliance with applicable law (sect. 13 (b) of the Law). The Law also prohibits parties from engaging, directly or indirectly, in business activities (sect. 21), except for investing its assets and receiving income from "properties which are intended for party activity, even if they are not so used at the time" (sect. 25). In addition, the Party Financing Law and the Parties Law set various limits and restrictions on contributions during primary and election campaigns, as well as in between elections. Parties may not receive contributions, in money or in kind, from domestic or foreign corporations (sect. 8 (a) of the Party Financing Law), from minors or from anonymous donors. Parties may receive up to NIS 500 (roughly $150) from individual families, or up to NIS 1,000 (roughly $300) in a campaign year, unless the party waives the right to public funding, in which case the ceiling for individual contributions rises to NIS 60,000 (roughly $18,000). Contributions to cultural or educational enterprises managed by a political party are not subject to the above limits, so long as that enterprise does not finance any election propaganda or party activity (sect. 8 (b) of the Party Financing Law). Persons running in party primaries may not receive more than NIS 5,500 (roughly $1,700) from individual donors and may not exceed a prescribed maximum aggregate amount in contributions; as with the parties themselves, primary candidates may not receive contributions from corporations, minors or anonymous donors, and all contributions may be used only for the primary campaign (sect. 28 A-28 BB of the Parties Law).

691. **Activities of human rights organizations**. The State of Israel places no legal restrictions on the right of organizations to engage in activities for the promotion and observance of human rights. For legal purposes, they are indistinguishable from any other organization: to the extent that they are registered as *amutot*, they must comply with applicable law; in every other sense, human rights organizations fully enjoy the freedom to associate and to pursue their various aims. There are dozens of organizations in Israel which work freely and fruitfully in all areas of human rights, including the Association for Civil Rights in Israel, several organizations which promote the rights of Arabs, a coalition of 53 different organizations working in the area of children's rights, over 100 organizations involved in womens' rights issues, the Religious Action Centre of the Movement for Progressive Judaism and other organizations involved in issues related to freedom of religion, organizations working to promote the rights of the disabled, homosexuals, minorities, organizations working to promote freedom of information and speech, and many more. These groups have played a crucial role in the development of human rights law in Israel. They have filed petitions and acted as legal counsel in a great number of landmark Supreme Court cases related to human rights. They also are significantly involved in legislative lobbying and, through elected representatives, in the initiation of legislation bearing on human rights. Their reports and conferences are generally widely covered in the media, and their publications are freely

circulated in Israel and abroad. They cooperate with international human rights organizations, and conduct varied publicity and fund-raising activities abroad. The activities of human rights organizations have not been curtailed in any way by government authorities.

Article 23 - Protection of the family

692. **Introduction**. As discussed under article 18, Israel has preserved the Ottoman and Mandatory arrangement under which the principal religious communities apply their own religious laws to their members in matters of "personal status". The scope of "personal status" matters is defined by relevant legislation to include marriage, divorce, alimony and child support, and in some cases succession. The jurisdiction of Muslim (Shari'a) courts is broader than that of other religious denominations, including child custody and paternity. Israel retained the application of religious law in these matters for two principal reasons. On the one hand, the new State wished to preserve the tradition of non-intervention by the ruling regime in the affairs of the many long-established non-Jewish religious communities. On the other hand, the application of Jewish religious law to the entire Jewish population in matters of personal status is a crucial pillar in the delicate constitutional edifice which Israel has created to strike a balance between its aspirations as a Jewish and a democratic State. Israel entered a reservation upon ratifying the Covenant, explaining that matters of personal status are governed in Israel by the religious law of the parties concerned, and that to the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law. As a result, the discussion under this article does not address the law and practice in matters of marriage and divorce or spousal support.

693. In 1995, a new family court division within the Magistrates' Courts was established with jurisdiction over a broad range of family-related matters, including adoption, alimony, change of name, paternity and maternity, child custody, succession and family violence. Family Courts Law, 5755-1995. These family-related matters were hitherto adjudicated in several different courts within the civil system. The new Law, however, does not alter existing jurisdictional divisions between the civil and religious courts in matters of personal status, as many such matters remain under the parallel jurisdiction of the various religious courts. For example, in certain circumstances a Jewish religious court, which has original jurisdiction over divorce suits between Jewish spouses, may, in the context of the divorce proceedings, also decide matters of alimony and child custody at the request of the party filing for divorce. If a suit for divorce has not yet been filed, however, then either of the parties may initiate proceedings in the civil courts, which can decide on alimony and custody but lacks the power to issue a divorce decree (*get*). In addition, child custody and succession matters pertaining to Muslims remain under the exclusive jurisdiction of the Shari'a courts.

694. **Meaning of "family"**. Although the family is firmly acknowledged, under both religious and civil law, as the basic, natural group unit in Israeli society, Israeli law contains no single definition of "family". The past two decades have witnessed significant demographic changes in the structure of families in Israel. Single parenthood has risen dramatically, almost doubling over the last decade (1985: 54,600; 1995: 91,900); non-marital cohabitation,

with or without children, has also become more common. For various purposes such as entitlement to benefits, social insurance and income taxation, Israeli law and practice recognize various forms of family, including "extended" family and non-marital cohabitation. Homosexual couples have received partial recognition by administrative authorities in matters such as entitlement to pensions. The administrative programmes and policies of the Government aim at supporting the family without showing a preference for a particular form or concept of family. A recent legislative amendment has expanded the support programmes for single-parent families, including cash entitlements, education grants, job training, housing loans, and preference in day-care placements. Single Parent Family Law, 5752-1992. Families with four or more children receive from the National Insurance Institute a higher monthly allowance and cash grant upon birth for each child from the fourth onward. At the same time, special benefits are given to families which care for ageing or sick relatives within their own homes, thus encouraging the strengthening of extended family ties.

Non-marital cohabitation

695. Israeli law recognizes non-marital partnerships, and in most areas gives such unions a status equal to that of formal marriage. Non-married partners enjoy the same rights as formally married couples for purposes, among others, of social security entitlements, pensions, resident's protection against eviction, tort damage awards, income taxation. Non-married spouses have the same inheritance rights as married spouses provided that they are not legally married to someone else. The Supreme Court has articulated in several decisions the policy that non-marital partnerships are as important to the strength and stability of society as traditionally married spouses, and that it is in the public interest for the State to support such unions. In one such case, the Court ordered the Minister of Interior to register the name of a woman who wished to change her family name to that of her non-married spouse. H.C.J. 69/91, *Efrat* v. *Director of Population Administration*, 47(1) P.D. 749. In 1996, this landmark holding was incorporated by legislative amendment into the Names Law, 5716-1956. The right to take the family name of a common-law spouse has even been upheld recently in a case where one member of the couple was still married to another person. H.C.J. 6086/94, *Nazeri* v. *Director of Population Administration*, 96(1) Takdin 679.

696. To the extent that relations between non-married spouses and their children are determined by civil law, non-married spouses bear the same statutory obligations as married (or divorced) parents with respect to the duty of care toward their children or other minors in their care, except in the case of Muslims, for whom religious law applies in this regard. They also bear the same statutory rights and duties as married parents in cases of family violence. Although non-married spouses bear no statutory duty to support each other, the courts have held that an implied commitment to support may exist in appropriate circumstances. The "community property" rule, which applies in Israel to matrimonial property relations for those marriages entered into prior to 1973, has been extended by case law to non-marital partners.

697. In certain specific matters, non-married spouses do not enjoy the same rights as married spouses. Among others, they are not immune, as are married

spouses, from testifying against one another in most criminal proceedings not involving family violence; they do not enjoy the right of non-resident spouses to enter Israel under the Entry into Israel Law, 1952; and they do not have the right to adopt a child together within Israel, although they may adopt a baby from abroad under applicable law, as discussed under article 24.

698. **Minimum marriage age**. Under the Marriage Age Law, 5710-1950, women from the age of 17 onward may marry freely. Women under the age of 17 may not marry, regardless of the religious law applicable to them, except in two sets of circumstances: a court may allow an under-age woman to marry if she is pregnant with or has given birth to the child of the man whom she seeks to marry; the court may also permit a woman who is at least 16 years old to marry in "special circumstances", which specifically do not include community custom and tradition. There is no statutory minimum marriage age for men; as a result, the individual's religious law will apply. The current legal arrangement regarding minimum marriage age for men, and its difference from that applying to women, is presently under review by the Supreme Court; at the same time, a private member's bill which would eliminate the discrepant arrangements for men and women is currently being considered by the Knesset.

699. The Marriage Age Law prescribes criminal penalties of up to two years' imprisonment for anyone who arranges or conducts the marriage of an under-age woman without court permission, as well as for the man who marries her. The woman is excluded from liability. Moreover, the mere fact that a marriage was made in violation of the law is a ground for divorce.

700. The rate of Jewish and Muslim marriages involving minors has steadily declined in Israel over the last two decades, as can be seen from the following table:

Table 16. Marriage of minors up to age 17
(per thousand registered marriages)

Year	Jews			Muslim		
	Brides		Grooms	Brides		Grooms
	Up to 16	17	17	Up to 16	17	17
1975-1979 (avg.)	12.3	48.4	1.2	19.6	133.1	2.2
1985-1989 (avg.)	2.4	17.4	0.3	15.4	140.2	1.7
1991	0.9	13.9	0.1	10.1	179.1	0.7
1992	0.7	11.4		0.5	179.7	
1993*	0.6	10.6	0.2			

* Statistics are not available for this year for Muslims.

701. **The right to marry and civil marriage**. Due to the application of religious law in matters of marriage and divorce, neither civil marriages nor marriages between people of different religions are performed in Israel. Each religion applies its own rules regarding validity of marriages, including consanguinity restrictions.

702. Marriages which are prohibited or invalid under religious law are nonetheless recognized if conducted outside Israel, so long as they are conducted in accordance with the laws of the country where the marriage took place. Divorces in such cases, however, if done in Israel, must be in accordance with relevant religious law; in some cases a person who has married or divorced in a civil ceremony outside Israel will need the approval of the proper religious court if he or she wishes to remarry in Israel.

703. There are no mandatory waiting periods or blood tests for persons of any religion wishing to marry in Israel. The law of each religion prescribes its own consanguinity restrictions.

704. **Bigamy**. As bigamous marriages are recognized under relevant religious law, and the validity of marriages is determined solely according to religious law, the Knesset has acted to limit the practice of bigamy by making it a criminal offence punishable by up to five years' imprisonment (Penal Law, 5737-1977, sect. 176). A person who conducts a marriage ceremony which is bigamous for either the bride or groom is also subject to the general criminal prohibition against conducting marriages forbidden by law or marriages which amount to a criminal offence (Penal Law, sect. 182).

705. There are two exceptions to the rule of criminal liability for bigamy. A Jewish man will be immune from prosecution for bigamy if he is given permission to have a second wife by a final judgement of a rabbinical court which is confirmed by the President of the Rabbinical Court of Appeals. Persons belonging to other religions will be immune from prosecution if they can show that their first spouse is unable, due to mental illness, to perform actions necessary to annul or terminate the marriage; or if the first spouse has been absent for at least seven years in circumstances which indicate a reasonable probability that he or she is no longer alive (sects. 179-180).

706. Specific legislative arrangements have been made to safeguard the interests of wives in bigamous marriages, such as section 146 of the Succession Law, 1965, which provides that both wives of a bigamous husband shall share in his estate upon his death.

707. To prevent unilateral divorce, and thus indirectly to lower the possibility of bigamous marriages, the Penal Law (sect. 181) also makes it an offence, punishable by up to five years' imprisonment, for a man to divorce his wife against her will without a proper judicial divorce decree.

Measures of protection

708. **Social insurance and entitlements**. The State of Israel operates several entitlement programmes through the National Insurance Institute (NII) as well as other benefits which aim to preserve the family's standard of living and to enable them, directly or indirectly, to bear the economic burdens of raising

children. All families residing in Israel, regardless of income, receive a "children's allowance", a monthly cash grant which increases with the number of children in the family. In December 1996, for example, a family with one child received NIS 141 a month (approx. $43); a family with two children received NIS 282; with three children - NIS 564; four children - NIS 1,135; and five children - NIS 2,144 per month. In 1994, 795,000 families received children's allowances, amounting to 21.3 per cent of the total benefits paid by the NII and approximately 1.7 per cent of GNP. Families also receive income tax deductions according to the number of children in the family.

709. The NII administers several general programmes which protect the family by insuring against loss of income, such as unemployment and disability. The NII also pays income support benefits to families and individuals who do not earn the minimum level of income as determined by the Income Support Law, 5740-1980, and who are not covered by other income maintenance programmes. Eligibility for income support benefits is determined by income and by proof of inability to integrate into the labour market. In 1994, these benefits were paid to approximately 35,000 families.

710. Persons who receive old-age pensions, survivors' pensions or disability allowances from the NII are granted incremental benefits for dependents. Under the NII's disability insurance programme, families with disabled children receive a special allowance to help them shoulder the financial burden of caring for the child at home. Similarly, the NII provides an in-home care grant for families who wish to care for sick or disabled elderly family members in their home.

711. The NII grants the full range of allowances (children's, disability, and income supplements) to children whose parents live abroad, including primarily those children who have immigrated to Israel with relatives other than their parents.

712. Until recently, the NII followed a policy of setting off children's allowances against any income tax debts of the parents. This policy had a disproportionate effect on poorer families. After a significant lobbying effort by NGOs working in the area of children's rights, the NII agreed to refrain from setting off child allowances against tax debts; a private bill to amend the National Insurance Regulations in this regard has passed its first reading in the Knesset.

713. State institutions and voluntary organizations offer a variety of health services serving virtually the entire population, as well as a broad range of welfare services for families with particular needs and difficulties. These programmes are discussed under article 24.

Maternity and paternity assistance

714. Israeli labour law, together with a comprehensive system of cash entitlements and other benefits, provides support for mothers and their families during pregnancy, birthing and postnatal care. A pregnant woman must notify her employer of her condition by the fifth month of pregnancy. Thereafter, she may not be employed for more than six days a week, on the weekly day of rest, or at night, and she may not work overtime hours without

her consent and a physician's permission. A pregnant woman who has been working for the same employer or at the same workplace for at least six months may not be fired by her employer without special permission from the Minister of Labour and Welfare. Any employer who fires a pregnant woman without ministerial permission is subject to criminal liability, and the employee is reinstated. In the event that a pregnant employee is fired before she informed her employer of her pregnancy, she will be reinstated without any criminal sanctions imposed on the employer.

715. Pregnant women are entitled to paid absences from work for routine medical examinations. A pregnant woman who receives medical confirmation of her inability to work for a specified period may take a paid leave from work with no effect on any seniority-related rights. Under a recent amendment to the National Insurance Law, women who are unable to work due to a high-risk pregnancy receive the equivalent of their salary from the NII, up to 70 per cent of the average wage.

716. The cost of the birth mother's hospitalization during childbirth is paid by the NII directly to the hospital as part of the basic basket of health services. Costs are also covered in the event of a stillbirth. Immediately upon birth of the baby, the mother receives a "maternity grant", equal to 20 per cent of the average wage, or more in the event of a multiple birth, to help cover some of the initial costs of preparing their home for the baby. The maternity grant is paid to all women residents or wives of residents, even if they gave birth in a hospital outside of Israel, and to women working in Israel or wives of men working in Israel, provided they gave birth in a hospital in Israel. A similar grant is given to adoptive parents. The maternity grant is currently equivalent to roughly $300.

717. From the third child onward, families receive an additional "birth allowance" for six months, equal to 50 per cent of the average monthly salary for the third child, 75 per cent for the fourth child and 100 per cent for the fifth and subsequent children.

718. The Employment of Women Law, 5714-1954, gives all working women a 12-week paid maternity leave, which can be extended in special circumstances such as sickness, multiple births or hospitalization of the infant. Maternity leave is mandatory - an employer may not employ a female employee during her maternity leave - although the woman may choose when to begin her leave at any time after the middle of the seventh month of pregnancy. A recent amendment to the Women's Employment Law allows the father to take half of the 12-week maternity leave in place of the mother, even if she is not employed. During maternity leave, the mother's or father's employer, as the case may be, must continue payments to the employee's retirement fund and to any other recognized employer-employee contribution-driven plans. The mother's or father's salary during that period is paid as a "maternity allowance" by the NII, at a rate equal to 100 per cent of his or her average salary during the three months prior to the leave, up to a certain maximum ceiling. Until 1994, the maternity allowance was 75 per cent of the pregnant woman's average salary, but was not taxable.

719. After the end of the paid maternity leave, the mother is entitled by law to take an additional leave without pay for a period of up to 12 months

depending on how long she has been employed, with full security against termination of employment. Fathers whose wives have been working for at least six months may take the unpaid leave of absence instead of their spouse. This right also applies to fathers who have sole custody of the infant or whose wives are incapacitated, as well as to adoptive fathers. During the first four months after the maternity leave, full-time working mothers may take off one hour from work each day with no decrease in salary. Adoptive mothers enjoy the same rights and benefits as biological mothers with respect to maternity leave. Other laws enable parents to devote themselves to caring for their children without suffering undue economic loss. For example, the Severance Pay Law entitles an employee who quits his or her job during the first nine months following childbirth in order to care for a child to receive severance pay, so long as the other parent has not done the same. Under the Sick Pay (Absence from Work due to Child's Illness) Law, 5753-1993, parents may decide which one of them will take an absence from work for a combined total of six days a year to care for a child under the age of 16. In addition, under the Equal Employment Opportunities Law, 5748-1988, any day-care services, shortened work days or maternity absences offered to mothers, as well as day-care expenditures covered by employers, must also be offered to fathers.

720. All of the maternity and paternity assistance programmes just described are available to all citizens of Israel, regardless of race or religion. Only persons who have failed to pay their social insurance dues for a minimum number of months during the two years preceding birth may not receive NII benefits.

New reproductive technologies

721. Fertility treatments in Israel are highly developed and well-subsidized. Israel currently has 20 in-vitro fertilization (IVF) clinics, or approximately one centre for every 285,000 inhabitants, the highest per capita rate in the world. Insurance subsidies cover, on average, NIS 6,500 (approx. $1,900) for each cycle of IVF treatment, not including hospital expenses and other costs which are generally covered by the basic basket of health services. Although there is no clear standard of eligibility for subsidized fertility treatments, couples are generally eligible if one year of sexual relations without contraception fails to result in pregnancy. The basic basket of health services covers the cost of seven cycles of treatment, up to the birth of two live children; there is no limit to the number of non-subsidized treatments a woman may receive prior to conception. Unmarried women are now eligible for fertility treatments with donor sperm in the same manner as married women. In 1993, 7,000 cycles of IVF treatment were performed (some women received more than one cycle of treatment).

722. Israel has become the first country to give full legislative sanction to surrogate motherhood. The Surrogate Motherhood Agreements (Approval of Agreement and Status of Newborn) Law, 5756-1996, sanctions full surrogacy (where the carrying mother is not genetically related to the resulting child) provided, among others, that all parties are adult residents of Israel; that the carrying mother is unmarried, except perhaps in certain extenuating circumstances; that the surrogate and the designated parents have no family relation; that the surrogate and the designated mother have the same religion;

and that the sperm used is that of the designated father. The request for surrogacy must be approved by a seven-member statutory committee composed of physicians, social workers, psychologists, attorneys and a member of clergy of the contracting couple's faith. All requests must be supported by a psychological evaluation of the parties and a medical examination regarding the inability of the designated mother to become pregnant or to carry a pregnancy to term. The committee may approve monthly payments to the carrying mother to cover actual expenses in addition to compensation for loss of income, time, or other reasonable compensation. Any payment to the carrying mother beyond the amount approved by the committee is illegal, and subjects all parties to the agreement to criminal liability. To become the child's legal parents, the contracting couple must apply for a "parenthood order" within one week of the birth; such orders are issued by a court unless it is convinced that to do so would be contrary to the best interests of the child. Prior to the issuing of the parenthood order, the carrying mother may ask to withdraw from the agreement, and the court may decree that she is the child's legal mother, provided that her retraction is justified by a change in circumstances, and the child's best interests will not be jeopardized. No retraction is possible after the parenthood order is issued.

723. The first birth in Israel by a surrogate mother - who gave birth to twins - took place in February 1998.

724. **Child custody**. Under the Capacity and Guardianship Law, 5722-1962, parents are recognized as the equal, natural guardians of their minor children. They bear both a statutory obligation and a right to attend to the child's needs, including education and upbringing, vocational training, and maintenance of the child's property; their guardianship also includes the right to custody of the child, the right to determine the child's place of residence, and the authority to represent the child (Capacity and Guardianship Law, sect. 14). In all matters related to their guardianship, parents are obligated by law to act "in the best interests of the child in the manner that dedicated parents would act under the circumstances" (sect. 15). In the event that one parent dies, the surviving parent retains the duty (and the right) to be the child's guardian.

725. The "best interests of the child" doctrine is also applied in determining the custody of children between biological parents, or in cases in which children may be removed from parental custody. Courts typically consider a number of factors in determining what is in the child's best interests, such as who was the primary caretaker, the relationship that each parent (or third party) has with the child, and, depending on the child's age, the child's preference. In custody disputes between parents, the Capacity and Guardianship Law establishes a presumption that maternal custody is to be preferred for children under six years old. This presumption may be rebutted in rare and extreme circumstances when the mother is deemed unfit. In general, most courts tend to favour maternal custody, even with older children, and liberal visiting rights for the father. Joint custody arrangements have become somewhat more common over the past several years. In cases involving the removal of a child from parental custody, the interests of the child alone are not sufficient to warrant a denial of parental custody: it is also necessary that specific statutory grounds for denial of parental custody be fulfilled, such as if the parents are incapacitated or incapable of

fulfilling their obligations, if they refuse without reasonable justification to care for the child's needs, or if the child's physical or mental well-being is found by a welfare officer to be at risk (See, e.g., Capacity and Guardianship Law, sects. 27, 33 and 38; Child Adoption Law, 5741-1981, sect. 13 (4); Youth (Treatment and Supervision) Law, 5720-1960, sect. 3 (4)).

726. **Maintenance and child support in the event of separation or dissolution of marriage**. Under the Family Law Amendment (Maintenance) Law, 5719-1959, the "personal" law of the husband and wife - that is, the substantive law of the religion with which they are affiliated - governs questions of child and spousal support. Under a 1981 amendment to the law, the parents' child support obligations shall be determined according to their respective incomes.

727. Several legal remedies are available under Israeli law to ensure payment of maintenance and child support. As a judgement debtor, the non-paying parent may be subject to the full range of remedies available for enforcement of judgements, such as garnishment and attachment of assets, preventing departure from Israel, restrictions on financial activity and, in extreme cases of bad faith avoidance, even imprisonment for up to seven days. In any bankruptcy proceedings against the non-paying parent, child support payments are given preference over the claims of other creditors, including the tax authorities. Finally, under the Maintenance (Guarantee of Payment) Law, 5732-1972, the NII will act as guarantor for the parent in default, upon request by the custodial parent. The NII not only pays the creditor the monthly amount set in regulations, but takes on the burden of handling execution proceedings against the recalcitrant spouse. Currently, the amount paid by the NII is 25 per cent of the average monthly wage if the woman has no children; 39.7 per cent of the average wage if the woman has one child; and 49.6 per cent for a woman with two children. However, if the court has previously set alimony and child support payments at an aggregate amount less than that set by the regulations, the NII will pay the lower amount.

Division of marital property during marriage and upon dissolution

728. Under the Women's Equal Rights Law, 1951, married women enjoy equal rights in marital property. The law, however, specifically does not apply to determining the status of marriage and divorce itself, which is governed by religious law. As the question of dividing marital property arises, for the most part, upon divorce or separation, Israeli jurisprudence has witnessed a certain conflict and overlap regarding the law to be applied in dividing marital property. As mentioned above, the civil and religious courts both may claim jurisdiction over division of marital property, the former by original jurisdiction, and the latter by ancillary jurisdiction in the context of a divorce proceeding. Religious courts must apply civil law, not religious law, in matters of spousal property distribution, on the ground that property distribution is not, strictly speaking, related to the "personal status" of the spouses, which is the basis for application of religious law. H.C.J. 1000/92, *Bavli v. Rabbinical Court of Appeals*, 48(2) P.D. 221. The Court held that the Rabbinical Court must divide marital property in accordance with the equality provisions in the Women's Equal Rights Law, 5711-1951, and thus may not decide upon a distribution that discriminates against the wife.

729. Under Israeli law, the distribution of marital property is governed by the principle of "community property", which treats all earnings, profits and assets acquired during the marriage as owned jointly by husband and wife, regardless of their respective incomes. Property acquisitions by gift, bequest, or devise, and property acquired before marriage are considered separate property. The community property principle was developed in case law as a presumption that the partners have an equal share in marital property provided that there was a "joint effort" by both partners in the overall family enterprise. In 1973, the Knesset incorporated the community property principle into law, in such a manner that all couples married from 1973 onward are deemed to share equally in the marital estate, unless they contract otherwise; the "joint effort" requirement does not apply to couples covered by the statute. Spouses (Property Relations) Law, 5733-1973. The judicial community property rule, which requires a showing of "joint effort", continues to apply to all couples married prior to enactment of the Law, as well as to non-married couples.

730. Under principles developed in the case law, the presumption of shared spousal ownership of all marital assets vests only upon the dissolution of the marriage. This rule makes it difficult for creditors to recover judgements against one spouse from assets held by or registered in the name of the other spouse, so long as they are married. It also can impair the ability of one spouse to recover his or her share of the marital property in the event that the couple, for some reason, is unable to get divorced.

Inheritance

731. To the extent that matters of inheritance are adjudicated in civil courts, they are governed by the Succession Law, 5725-1965, which gives husbands and wives equal inheritance rights in the event of an intestate death. The surviving spouse inherits either one half or all of the estate, depending on whether or not there are children or grandchildren living at the time of death. Sons and daughters receive equal, proportional shares in the estate. There are two exceptions to the equality of intestate inheritance rights: a widow is entitled to alimony payments from her deceased husband's estate, and may remain in the home in which they lived together; no such rights exist for widowers.

Choice of family name

732. Until recently, the Names Law, 5716-1956, section 6, provided that as a rule, a married woman takes her husband's family name upon marriage, although she may keep her own name or add it to her husband's name. In practice, however, the Ministry of Interior would automatically change the woman's family name upon registration of her marriage, without asking what she preferred. A February 1996 amendment to the Names Law placed men and women on equal footing, clarifying that upon marrying, either spouse may retain his or her former name, choose the spouse's family name, add the spouse's family name to the person's former name, select a new family name identical to a new one chosen by his or her spouse, or add such a new name to a shared former name (Names Law, sect. 6). The amendment further provides that the husband or wife shall notify the marriage registrar of his or her name preference at the time of registration, instead of having the wife's name changed automatically. In addition, the law no longer requires any change in the family name of married couples to be made jointly by the husband and wife.

Article 24 - Protection of children

733. During the nearly 50 years of its existence, Israel has built a thorough foundation of law, social institutions and services for the protection and welfare of children. In roughly the first two decades following its establishment, Israel set in place the basic components of a comprehensive system of social protection characteristic of a modern welfare State, including social insurance, income support programmes, health care and universal education, and special programmes designed to meet the needs of disadvantaged groups. At the same time, the Knesset enacted a body of legislation establishing a framework of rights of children to protection and treatment in various areas of their lives, extending from parental obligations to controls on child labour, protection of disabled children and children in danger, special treatment of children in the legal process, and so on.

734. The past decade has witnessed a heightened awareness on the part of State agencies and society, as well as significant legislative development and the institution of new social programmes in areas such as child abuse, violence in the family, the family court system, health care, treatment of children in detention, involuntary hospitalization and child labour.

735. In 1991, the State of Israel ratified the Convention on the Rights of the Child. Israel's initial report under the obligations of that Convention will be submitted in the near future. In July 1997 an expert committee headed by a District Court judge was appointed by the Minister of Justice to undertake a comprehensive review of Israeli legislation bearing on the rights and welfare of children, and to recommend any legislative changes necessary to bring Israeli law and practice fully into accord with the provisions of the Convention on the Rights of the Child.

736. As a fundamental principle in Israel's legal system, the right to equality, and the corresponding right to freedom from discrimination, extends to the protection of children and is enforceable in the courts, even in the absence of a general constitutional prohibition of discrimination. The occurrence of de facto discrimination will be addressed in the specific contexts in which it may arise in the discussion under this article.

Primary responsibility

737. Parents bear the primary responsibility for the protection and upbringing of children in Israel. Under the Capacity and Guardianship Law, 5722-1962, as the "natural guardians" of their minor children, parents bear both a statutory obligation and a right to attend to the child's needs, including education and upbringing, vocational training, and maintenance of the child's property; their guardianship also includes the right to custody of the child, the right to determine the child's place of residence, and the authority to represent the child (Capacity and Guardianship Law, sect. 14). The rights attendant to parental guardianship have been interpreted as "the right to fulfil their obligations" (B.D.M. 1/81, *Nagar* v. *Nagar*, 38(1) P.D. 365, 393). In all matters related to their guardianship, parents are obligated by law to act "in the best interests of the child in the manner

that dedicated parents would act under the circumstances" (sect. 15). In the event that one parent dies, the surviving parent retains the duty (and the right) to be the child's guardian.

738. **Child custody**. As discussed under article 23, "the best interests of the child" doctrine is applied in determining the custody of children between biological parents, or in cases in which children may be removed from parental custody. However, in the latter class of cases, the interests of the child alone are not sufficient to warrant a denial of parental custody: it is also necessary that specific statutory grounds for denial of parental custody be fulfilled, such as if the parents are incapacitated or incapable of fulfilling their obligations, if they refuse without reasonable justification to care for the child's needs, or if the child's physical or mental well-being is found by a welfare officer to be at risk (See, e.g., Capacity and Guardianship Law, sects. 27, 33 and 38; Child Adoption Law, 5741-1981, sect. 13 (4); Youth (Treatment and Supervision) Law, 5720-1960, sect. 3 (4)). In general, a decision to remove a child from parental custody is made by the Court; in urgent circumstances, however, a welfare officer may place the child in the custody of the State, provided that the matter is brought promptly before a Youth Court for its consideration. The child has a right to be heard before a court decides to remove him or her from parental custody.

739. **Adoption**. The Child Adoption Law, 5741-1981, prescribes a series of standards designed to protect the interests of children put up for adoption. First, adoption is permitted only after a court has been satisfied that the biological parents have given voluntary and informed consent, or that there are other appropriate grounds for waiver of such consent. In circumstances in which the welfare of the child urgently requires the removal of a child from the parental home, the welfare case officer may place the child in the home of the prospective adoptive parents or elsewhere even without first receiving parental consent or a court order sanctioning waiver of such consent, so long as the court approves the removal within 14 days (Child Adoption Law, sect. 12). Second, if the child is at least nine years old, or is younger but shows a suitable level of understanding, the court will not issue an adoption order unless it is satisfied that the child wants to be adopted by his or her prospective adoptive parents. The fact of the adoption will not be disclosed to the child only if he or she does not know that the adoptive parents are not his or her biological parents, all indications point to the desire of the child to continue the relationship with the adoptive parents, and the interests of the child are deemed to require non-disclosure (sect. 7). Third, an adoption order will not be granted until after the child has lived with his or her adoptive parents for at least six months and the welfare case officer gives a favourable written report regarding the child's condition and welfare in the adoptive home. Finally, the child and his or her adoptive parents must be of the same religion (sect. 5).

740. The adopted child has a right to know, upon reaching the age of 18, the identity of his or her biological parents.

741. In part because of the relatively small number of Israeli-born children put up for adoption, as well as the requirement that the child and the adoptive parents share the same religion, many parents in Israel who wish to adopt a child have found it necessary to adopt children from other countries.

The absence of clear local guidelines and controls on international adoptions, the lack of adequate staffing to handle the caseload at the Ministry responsible for overseeing these adoptions, and other factors conspired to make adoption of alien children a dauntingly expensive, risky and time-consuming affair. Recently, following the ratification of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993, the Knesset enacted a substantial amendment to the Child Adoption Law which establishes guidelines and procedures for international adoptions. Among other things, the amendment provides for a system of duly accredited private adoption agencies which may handle requests by Israeli residents who wish to adopt a child from another country; standards for evaluating the fitness of the adoptive parents and for the oversight of the work of the private agencies; and coordination with the authorized organs of the foreign State to ensure that adoption by Israeli parents is in the best interests of the child and that the necessary legal conditions under the law of the foreign State for putting the child up for adoption have been met.

Oversight and support of the primary care giver

742. **Parental role**. As discussed above, Israeli law requires parents to provide for their minor children to the extent of their financial abilities. Failure of parents to provide adequate support can lead to removal of the child from parental care. In addition, the Penal Law, 5737-1977, sections 361 *et seq.*, prescribes criminal sanctions against parents or other primary care-givers for abandonment and neglect:

> "361. A person who unlawfully abandons or deserts a child under the age of two years, whereby its life is endangered or its health is or is likely to be permanently injured is liable to imprisonment for five years.
>
> "362. The parent of a child under 14 years of age or of an invalid unable to provide for his own needs (each of these in this and the next section referred to as a 'helpless person'), or a person bound by law or agreement to provide for the needs of a helpless person in his charge, who does not supply him with food, clothes, bedding and other essentials of life to the extent required to preserve his well-being and health is liable to imprisonment for three years unless he proves that he took steps which in the circumstances were reasonable in order to secure the means of supplying those essentials and that he is unable to supply them.
>
> "363. The parent of a helpless person, or a person bound by law or agreement to provide for the needs of a helpless person, who refuses to receive the helpless person in his charge from a person not bound to provide for his needs or leaves him in the hands of a person who has not agreed so to provide is liable to imprisonment for six months; if he abandons the helpless person, he is liable to imprisonment for three years.
>
> "364. A person who offers or gives consideration for permission to have possession of a minor under the age of 14 years or asks for or receives

a consideration for such permission is liable to imprisonment for three years, and it is immaterial whether the consideration is money or money's worth.

"365. (a) A parent or guardian of a minor under 14 years of age who surrenders the minor, or permits him to be surrendered, to a person not his parent or guardian, such surrender involving repudiation of his obligations or rights with regard to the minor, is liable to imprisonment for two years.

"(b) It shall be a good defence to a charge under this section if one of the following is proved:

"(1) the minor was surrendered for the purpose of adoption under the Adoption of Children Law, 5720-1960;

"(2) the minor was surrendered for a determinate period and with the consent of a welfare officer within the meaning of the Welfare Services Law, 5718-1958;

"(3) the minor was surrendered to his grandparent, uncle, aunt, brother or sister and the surrender was in the interest of the minor."

The mechanisms for enforcement of child support obligations by non-custodial parents in case of separation or divorce are discussed under article 23. The special arrangements for protection of children exposed to abuse or neglect within the family are discussed below.

743. **Financial support programmes**. The National Insurance Institute (NII) is responsible for the administration of all social insurance programmes in Israel. The NII administers several general programmes which indirectly benefit children by covering the major contingencies of income loss, such as unemployment, disability and maternity. Children's allowances are paid to all families with children, regardless of income, according to the number of minor children in the family. The amount of the allowance for each child in a given family increases from the third child onward, thus helping large families attain a minimum income necessary for the care and upbringing of their children. In 1994, 795,000 families received children's allowances, amounting to 21.3 per cent of the total benefits paid by the NII and approximately 1.7 per cent of GNP.

744. The amount of the children's allowance provided to the fourth and subsequent children is higher for families in which at least one of the members served in the military. Since most of the Arab population is exempt from military service, the level of benefits has not been equal for larger Arab and Jewish families. In January, 1994, the Government began a four-year programme to equalize benefits paid to families whose members have not served in the military so that all families will receive children's allowances based solely on family size.

745. The NII also pays income support benefits to families and individuals who do not earn the minimum level of income as determined by the Income

Support Law, 5740-1980, and who are not covered by other income maintenance programmes. Eligibility for income support benefits is determined by income and by proof of inability to integrate into the labour market. In 1994, these benefits were paid to approximately 35,000 families.

746. Special income supplements are also given to single-parent households, including education grants for their children. Child disability allowances are given to families with children who have a recognized disability. The NII also gives income supplements for "abandoned" children, which includes, among others, orphans, children who have been removed from the parental home due to neglect, abuse or incest, children whose parents are unknown, and children whose parents live abroad. This last category embraces primarily the considerable number of children who have immigrated to Israel with relatives other than their parents. Recently, the NII decided to grant the full range of allowances (childrens, disability, and income supplements) for these children in the same manner as if they lived with their parents in Israel. In certain circumstances where the child has no legal guardian in Israel, the allowances are paid directly to the minor. In addition to income supplements for single-parent families, the Single Parent Family Law, 5752-1992, gives preference to single parents in job training, acceptance to day care programmes, and makes them eligible for a special housing loan.

747. Other grants and benefits, such as birth grants, guarantee of maintenance payments by the NII, orphan's grants, and maternity and paternity leaves, are discussed under article 23.

Health care

748. Until January 1995, when the new National Health Insurance Law came into effect, roughly 95 per cent of Israel's population was covered by health insurance. Insurance and health care was provided by four major sick funds, similar in nature to health maintenance organizations, and were financed by personal contributions, employer contributions and government subsidies. The largest and oldest of these health funds, Kupat Holim Clalit, operates its own hospitals, clinics and family health centres; the smaller funds often contract with private physicians for primary care, and generally purchase hospital services from Government-owned hospitals, the Kupat Holim Clalit and other agencies. Following an ongoing crisis in the Israeli health care system, a governmental commission recommended sweeping reforms, including the passage of a national health insurance law, decentralization of the hospital system, and the divestiture of the Ministry of Health from most of the service provision functions it had carried out until then. Thus far, the principal reform has been the enactment and implementation of the National Health Insurance Law in January 1995. The new law provides for automatic coverage of all residents of the State, regardless of ability to pay; even if a child's parents do not pay their health fees, a child will always have health coverage. The health funds provide a mandatory service package in return for an annual payment by the Government for each member, drawn from the health fees paid by each person or family to the National Insurance Institute, and are required under the new law to assume responsibility over time for certain services previously provided or funded by the Government in areas such as mental health and prevention,

including the family health centres. Patients are free to choose among the competing funds, which are prohibited from denying membership to anyone on the basis of age, health status or place of employment.

749. Specialized medical care for children in Israel includes a centrally-located Children's Hospital and designated children's wings in a number of general hospitals, preventive services and specialized mental health services, child abuse teams in general hospitals and special out-patient child abuse units.

750. The cornerstone of preventive health care for children has been the network of mother-child clinics (*Tipat Halav*), which focus on the well-being of women during pregnancy and of children from birth to age five. These centres offer prenatal examinations, vaccinations, early detection of mental and physical handicaps, abuse and neglect, and health education and counselling. Parents pay a nominal fee every six months for well-child care including immunization. Those unable to pay are referred to social workers for financial counselling and financial assistance if necessary; in any case, health care is never denied due to an inability to pay. The centres are community based, and most nurses become acquainted with the families during pregnancy and early development of all children. Thus these clinics are considered by the families as a source of support, and serve almost the entire population. It is estimated that 95 per cent of all families of childbearing age visit the mother-and-child clinics during pregnancy and the child's first two years. The rate of utilization drops sharply after children reach 2½ years of age.

751. In 1995, Israel's infant mortality rate was 6.8 per 1,000 live births. While there remains a steady difference in the infant mortality rates of Jews and non-Jews, the absolute difference in these rates has declined significantly over the past two decades. In 1979, the overall infant mortality rate was 18.7 per 1,000, 12.9 for Jews, 16.8 for Christians, 24.8 for Druze and 24.6 for Muslims. In 1995, the infant mortality rate was 5.5 for Jews, 6.7 for Christians, 7.1 for Druze and 9.7 for Muslims.

752. Children with diagnosed or suspected developmental problems are often referred to one of 26 child development centres. Some of these centres are affiliated with the health funds or the Ministry of Health, and a few are connected to general-care hospitals. The centres deal with early diagnosis, counselling and treatment for children up to age five who may be suffering from developmental or functional disabilities. Some centres also provide support services and guidance for parents. Children requiring treatment after the age of five are usually referred to a special educational facility or other medical framework.

753. **School-based public health services**. In elementary schools, preventive health services funded largely by the Ministry of Health are provided by specially trained public health nurses. Services in the schools include health education on topics such as nutrition, personal hygiene and puberty- and sex-related issues, immunizations and periodic hearing and vision tests.

754. Municipalities and regional authorities are responsible for preventive health services in high schools. The services provided are mainly educational in nature, with emphasis on preventing drug and alcohol abuse, communicable diseases including AIDS, and issues of safety.

755. The Ministry of Health, in conjunction with social service agencies and the Kupat Holim Clalit, give services at specialized centres to adolescents in addition to school-based services. These centres focus on sex education, including medical check-ups, treatment of adolescent problems such as acne and weight problems. At the time of submission of this report, the number of these centres is still small in relation to the total adolescent population.

756. Public mental health services include diagnostic testing, counselling and psychotherapy, and parental guidance which are provided by local Child and Adolescent Mental Health Clinics. In-patient treatment is given in special children or adolescent mental health wards by specially trained personnel. Out-patient clinics, serving particular catchment areas, are generally free of charge or charge only nominal fees. Nevertheless, the Ministry of Health has acknowledged that these mental health services serve middle-class families more effectively than the truly needy or disadvantaged, in part due to a lack of outreach to more difficult populations, such as less cooperative or multi-problem families. To redress this gap in services, the Ministry began by recently establishing a mental health centre for children and youth in Beersheva, serving the southern region of the country, and specifically dedicated to reaching more disadvantaged families and dealing with such problems as child abuse and family violence, which are discussed in more detail below.

757. Recent legislative developments related to children's health care include an amendment allowing minors to undergo testing for AIDS without parental consent; a new law which gives minors increased autonomy regarding consent to medical treatment; and a sweeping amendment of the Youth (Treatment and Supervision) Law, 5720-1960 which redefines the grounds for involuntary psychiatric hospitalization of minors, clarifies that commitment may be employed only if there is no less restrictive alternative, recognizes for the first time the right of minors to be heard in legal commitment proceedings, and provides for independent legal representation of the minor in such proceedings.

Welfare services

758. **General**. Under the Welfare Services Law, 5718-1958, personal social services for youth and children in Israel are provided by local authorities to individuals and families in need, with professional supervision and regulation by the Ministry of Labour and Social Affairs. The State's budget for operating welfare services is supposed to be based on a fixed formula, under which the State pays 75 per cent and the local authorities pay 25 per cent. In practice, the local authorities often bear more than their share of the cost. Moreover, poorer authorities are more dependent on State funding, which results in a certain discrepancy between local authorities regarding the extent of services and the ability to meet local needs.

759. Most personal social services are delivered through an extensive system of social service offices that operate on a local neighbourhood basis. These offices are staffed with professional social workers, who provide direct counselling services to members of the community. Local authorities are also responsible for the development and regulation of other programmes and services such as home help for families and after-school programmes. Other services are provided directly by the Ministry of Labour and Social Affairs, such as probation services, adoption services and most out-of-home services.

760. The Ministry of Labour and Social Affairs is responsible for meeting the needs of three major populations of children and youth: children living in poverty, children who are victims of abuse or neglect, and young people who engage in socially deviant behaviour. Within the Ministry, the Division for Personal and Social Services (DPSS) addresses the needs of children who are at risk or are disadvantaged. Local welfare offices serve the needs of poor and disadvantaged families under the supervision of DPSS, working with families as a whole while addressing the needs of the children in those families. Workers at these offices have, at minimum, a bachelor's degree in social work (BSW). Financed by various national insurance programmes, these workers provide counselling, advocacy, referrals, and to a certain extent can arrange direct financial aid, including assistance in purchasing basic household equipment (35,000 families received such help in 1995), temporary assistance in housing expenses (140,000 received assistance in 1995), home help to families who have difficulties managing their households (4,500 such families received home help in 1995), and assistance with placing children in day care, particularly while the mother is looking for work in compliance with the family's rehabilitation plan. In 1995, a total of 180,000 disadvantaged families, not including the elderly, received serves from the DPSS. Over the past several years, in an attempt to help prevent future problems for children in young families, the DPSS has been involved in developing specialized programmes for poor and disadvantaged families, particularly for young multi-problem families with at least one child under the age of six. These programmes emphasize the acquisition of basic life skills (such as managing the family budget and looking for employment) and improving family relationships and parental functioning.

761. The DPSS is also responsible for the implementation of several recent laws dealing with cases of custody disputes, marital problems, family violence and child abuse. A national network of 19 family-violence prevention centres has been established to work with families in which violence occurs. The DPSS also operates 74 family counselling stations serving approximately 9,500 families per year (35,000 children) through counselling to help improve parenting skills and solve marital problems. In child custody cases, specially-appointed family welfare officers are responsible for reviewing the family involved and making recommendations to the court regarding the preferred custodial arrangement. The DPSS also operates several centres where parents and children can meet in cases where the court has determined that one of the parents may not live at or visit the home; and 38 counselling and support centres for single-parent families.

762. The Service for the Child, a unit within the DPSS, bears statutory responsibility for placing children in adoptive families, including choosing appropriate adoptive parents. In 1992, the Service served

approximately 400 children, placing more than 200 in adoptive homes, and also served nearly 300 young unwed mothers through residential programmes and counselling. The Service operates two transitional facilities for children before adoption and one hostel for pregnant girls.

763. Another unit within the DPSS bears primary responsibility for providing services to children and youth who are victims of abuse or neglect, or are otherwise at risk. These services are given within the community and, when necessary, in out-of-home residential programmes. The community services include counselling for families and children, day care subsidies for children at risk of abuse and neglect, after-school settings providing recreation, therapy and hot meals, and a series of programmes aimed at improving parental skills and preventing further abuse. Reported cases of abuse and neglect are investigated by trained child protection officers, who have authority to appear in court and apply for protective orders for children at risk. Under the Prevention of Family Violence Law, 5751-1991, the child protection officer, as well as other persons, may apply to the court to have the violent parent or other person removed from the home, for periods ranging from several days to a total of a year. Following the enactment of legislation that mandated reporting of child abuse and neglect, which is discussed below, and a sharp rise in the number of reported cases, a network of emergency centres has been established by the Ministry of Labour and Social Affairs in cooperation with other non-governmental organizations, to give short-term residential services for up to three months and longer-term out-patient services in complex cases by referral.

764. The bulk of the DPSS's budget for handling cases of children at risk is devoted to residential placements. In 1995, approximately 7,700 children were living in residential homes and 1,700 were living with foster families, comprising roughly one-quarter of the children at risk in the care of the DPSS. Even when residential placement is voluntary, the placement must first be approved by a local committee consisting of social service workers, doctors, teachers, psychologists and health clinic nurses. In recent years, the Ministry, in an attempt to expand the range and effectiveness of out-of-home services for children at risk, has begun developing several alternative forms of residential placement, including community-based residential homes, group homes, residential homes operated by private families, and "day homes" in which the children return to their own homes at night. The Ministry has also begun developing special settings for mentally-disturbed children who have been transferred from closed institutions.

765. The delivery of effective social services to children at risk in Israel faces several problems common to many social service systems: the necessity to work within budgetary constraints, which limit the number of children who may be served, particularly those over the age of six, and the development of programmes which may best fit their needs along with those of the family; a certain reliance on out-of-home placements rather than family-centred intervention programmes, in part due to the relative scarcity of community-based settings with adequate resources; inefficiencies arising from overlapping responsibilities within the Ministry; and the difficulty of ensuring the quality of care in residential facilities. The Ministry of

Labour and Social Affairs has invested significant resources over the last several years in developing standards and practices to improve the quality of care in residential facilities.

766. Another department at the Ministry, the Division for Correctional Services and Services for Youth in Distress, handles marginal youth populations, such as juvenile offenders, children with substance abuse problems, those who have dropped out of school or have behavioural problems. Although juvenile crime and substance abuse are less widespread than in some Western countries, they have become increasingly common in Israel, particularly among high-school drop-outs. Two separate youth services, one for boys and one for girls, provide rehabilitative treatment for young people between the ages of 13 to 22, who have dropped out or are in the process of dropping out of educational frameworks and have shown other symptoms of behavioural problems. These services provide therapy, vocational training and educational enrichment, and operate youth clubs and runaway shelters, serving approximately 15,000 adolescents and young adults annually. They also operate services for battered women and rape crisis centres in conjunction with volunteer organizations. Another unit at the Ministry places youths who have not been integrated successfully into regular educational frameworks in alternative schools and work-study programmes.

767. The Ministry of Labour and Social Affairs also bears primary responsibility for handling cases of juvenile delinquency, investigating allegations of child abuse and neglect not involving the family, and investigating sex-related crimes involving children under the age of 14 either as victims or as witnesses. In each case involving a juvenile criminal defendant, a case officer at the Juvenile Probation Service within the Ministry prepares a pre-trial report on the defendant's behaviour, physical and mental health, and potential for rehabilitation, as well as post-trial sentencing and treatment recommendations. The Youth Protection Authority operates 37 rehabilitative residential settings for delinquent and severely troubled youth, including locked detention facilities, boarding schools, half-way houses, apartments and hostels, as well as a diagnostic centre.

768. The Israel police has special youth units that investigate alleged juvenile offenders, locate minors in distress and refer them to social service agencies. The police also run or participate in several outreach projects which aim at preventing drug abuse and reducing violence in the schools.

Methods of intervention for children in need

769. When a welfare officer has reason to believe that a minor is in need of assistance, he or she is authorized by law to begin intervention for the safety and welfare of the child. A "child in need" is defined by law as meeting any of the following criteria:

"(a) The person responsible for him cannot be found;

"(b) The person responsible for him is unable to care for or supervise him, or neglects such treatment or supervision;

"(c) He perpetrated an act which is a criminal offence and was not brought to trial;

"(d) He is found loitering, begging or peddling in violation of the Child Labour Law, 5713-1953;

"(e) He is subject to harmful influence or lives in a place that serves continuously as the site of a criminal offence;

"(f) His physical or emotional health is harmed or is likely to be harmed for any reason;

"(g) He was born suffering from drug withdrawal syndrome."

[Youth (Treatment and Supervision) Law, 5720-1960, sect. 2.] In such circumstances, if the parents or the person responsible for the child does not agree to the welfare officer's recommendations for treatment, or if the child's guardian agrees but the child refuses to comply, then the welfare officer may apply for an order from a youth court or family court, as the case may be. The court may require the child, or the parents or guardians, to carry out any measures deemed necessary for the treatment or supervision of the child, including with regard to education and psychological rehabilitation; it may appoint a "friend" for the child, who functions as a counsellor with powers and tasks defined by the court, or may place the child under the supervision of a welfare officer; or it may order the removal of the child from the custody of the parent or guardian if there is no other way to ensure the treatment or supervision of the child. The court may also order that the child undergo psychiatric diagnosis or treatment. Under a recent legislative amendment, the courts are also authorized, under certain circumstances, to notify the guardian of positive AIDS test results (sect. 3 of the law).

770. In all court proceedings regarding the treatment of the child, the court may not issue any decision without giving the child, his or her guardian and the welfare officer the opportunity to have their claims heard, and without receiving a written report by the welfare officer (sect. 8 of the law).

771. In severe cases involving imminent danger to the child, or in which urgent medical treatment (not including psychiatric diagnosis or hospitalization) may not be delayed, the welfare officer may take such measures necessary to prevent such danger or provide such medical care without the consent of the parent or guardian, and without a court order, provided that the child is not removed from the custody of the guardian for more than seven days without court approval (sect. 11 of the law).

772. **Confidentiality**. To help prevent unnecessary damage to children in need, the Treatment and Supervision Law makes it a criminal offence to publish any information which may enable identification of the child, in such a manner that discloses that the welfare services or the courts have intervened in the child's case, that the child has attempted or committed suicide, or which suggests that the child has committed a crime or an immoral act, or that he or she is a relative of a person who has committed such an act (sect. 24 of the Law). A currently-pending legislative bill would expand the prohibition to

include information leading to the identification of a child as a victim of a crime. Welfare officers and any persons with knowledge relating to psychiatric diagnosis or treatment of a child bear strict duties of confidentiality; no written or computer records of a child's psychiatric hospitalization may be kept beyond the child's personal medical file at the treating hospital, except if the child is diagnosed as having a mental illness which endangers himself or herself or others (sect. 23 of the Law).

Child abuse

773. Over the last decade, significant legislative reform in the area of child abuse has resulted in a dramatic increase in the detection and treatment of such cases, and in public awareness of an acutely harmful phenomenon the dimensions of which had remained largely hidden until then. In 1989, the Knesset enacted the Child and Helpless Persons Abuse Prevention Law, which created special criminal offences for assault and molestation - including physical, emotional or sexual molestation - of children or helpless persons, in addition to already-existing offences in the Penal Law.

774. The Penal Law (sect. 368 A) provides increased sentences for assault or molestation by a broadly defined category of persons deemed to have some degree of responsibility over the victim:

> "'Person responsible for a minor or helpless person' means any of the following:
>
> "(1) A parent or a person who is responsible for the sustenance, health, education or welfare of a minor or a helpless person, by operation of law, judicial decision, express or implied contract; or a person who is responsible as aforesaid for a minor or a helpless person by virtue of an unlawful or forbidden act that he has done;
>
> "(2) A member of the family of a minor or helpless person, who is at least 18 years old and is not a helpless person, and is one of the following: the spouse of a parent, grandmother or grandfather, offspring, sister or brother, brother- or sister-in-law, uncle or aunt;
>
> "(3) A person with whom the minor or the helpless person resides or is with on a permanent basis, who is at least 18 years old, provided that there exist relations of dependency or mastery between them."

775. Furthermore, the law imposes a duty, under pain of criminal liability, on all persons to report suspected cases of abuse against children or helpless persons to a welfare officer or to the police; professional workers, such as doctors, nurses, educational staff, social workers, psychologists, and staff at youth residential facilities, bear an augmented duty of disclosure (sect. 368 D of the Law). This new policy has had an important role in increasing reporting of child abuse. In 1994, the welfare services intervened in roughly 3,000 cases. At the same time, its implementation has raised certain difficulties when the duty of disclosure conflicts with a duty to maintain confidentiality, as in the case of a psychologist who learns of a suspected case of child abuse from his or her patient.

776. The Family Violence Prevention Law, 5751-1991, added an important new means of protecting children in families suffering from domestic violence by giving the court the power, in cases of actual or reasonably imminent violence or sexual abuse, to issue *ex parte* protective orders for a period of seven days, extendable if necessary for up to one year, which forbid the violent family member from entering the home, from harassing family members in or out of the home, from impairing the lawful use of property by the other family members, or from carrying firearms. During the seven-day period a hearing is held in the presence of the parties regarding the extension of the order. The court is entitled in such proceedings to depart from the usual rule preventing family members from testifying against one another.

777. A recent law makes it possible for witnesses in sexual abuse trials to testify by closed-circuit video (Criminal Procedure Amendment (Sexual Offences Testimony) Law, 5756-1996). This law also empowers the courts to require a victim impact statement by a welfare officer regarding the victim's condition, and requires trials for sex offences to be heard by a three-judge panel instead of by a single judge. In response to the recognition that incest victims frequently take many years to file complaints, the Penal Law was amended in 1996 to extend the 10-year statute of limitations in cases of incest, such that the period of limitation begins to toll not from the date of the offence but from the date on which the victim turns 18 (Penal Law (Amendment no. 47), 5756-1996).

778. The conviction and sentencing patterns since the above legislative reforms indicate a certain rise in conviction rates and the severity of sentences in cases of child abuse and incest. One Supreme Court decision, overturning an earlier decision by the same Court acquitting a father of incest on the ground that the daughter "was not in a situation preventing opposition", held that a child victim of incest is presumed to be unable to object to the act. F.H. 6008/93, *State of Israel* v. *Anonymous*.

779. **Corporal punishment**. As discussed under article 7, corporal punishment of students by teachers or school administrators constitutes criminal assault, and may ground a claim for civil damages in appropriate circumstances. Disciplinary guidelines published by the Ministry of Education, Culture and Sport prescribe series of alternative disciplinary measures, ranging from an oral reprimand to dismissal from school, as well as procedures that educational staff must employ prior to taking disciplinary action, including discussions with the student and his or her parents. Several years ago, following intensive lobbying efforts by NGOs, the Knesset decided to strike a provision from an amendment to the Penal Law which would have created a defence to criminal liability for any "reasonable" acts, including "reasonable" corporal punishment, taken with regard to a child by parents, teachers and other persons entrusted with authority over a child.

Protection of children in legal proceedings

780. Apart from the system of special safeguards throughout the criminal process for minor suspects or defendants, which are discussed under articles 9, 10 and 14, Israeli law provides for several legal institutions which help protect the welfare of children involved in various legal proceedings. Except in cases of violence or sexual abuse within the family,

testimony by a child against his or her parent, or by the parent against the child, are inadmissible in any criminal proceeding (Evidence Ordinance, sect. 3). Victims of or witnesses to sexual offences under 14 years old may not be called to testify, nor may any written statement they give be admissible, without the permission of a specially-trained youth investigator. If the youth investigator gives such permission, then the child is generally examined only by the youth investigator, and his or her testimony is heard only in the presence of the prosecutor, the defendant and his or her counsel, and the youth investigator, unless the court permits other persons to be present (Evidence Amendment (Child Protection) Law, 5715-1955, sect. 2). If the youth investigator does not allow the child to give testimony, then the investigator testifies in the child's place. When a minor testifies against his or her parent for sexual abuse, the court may order the accused parent to vacate the courtroom if it is deemed necessary to avoid emotional damage to the child (sect. 3 of the Law). Publication without court permission of any information enabling the identification of a minor who testifies in a sexual abuse trial is punishable by six months' imprisonment and a fine (sect. 6 of the Law).

781. Under a special procedure, the testimony of a child victim of a sex offence may be taken immediately, either in court after an indictment is filed, or even during the criminal investigation, provided that the youth investigator handling the case so consents (Criminal Procedure Law [Consolidated Version], 5742-1982, sect. 117 A). In 1995, a system of family courts was established with jurisdiction over a broad range of family-related matters, including family violence, adoption, alimony, change of name, paternity or maternity, child custody and succession. In all proceedings before these courts, minors have independent standing to file suits and to appear before the court, either by themselves or through a "close friend" in any matter in which their rights might be substantially impaired (Family Courts Law, 5755-1995, sect. 3 (d)). The court may also hear the testimony of a minor in camera, and may prevent the examination of a minor if the judge feels that the minor might be harmed thereby (sect. 8 of the Law).

Education

782. Education in Israel is compulsory for children between the ages of 5 and 15, or until the end of the 10th grade, which ever comes earlier; public education is free of charge, except for books and materials, for all children aged 5 to 18 (Compulsory Education Law, 5709-1949, sect. 6). Most 3- and 4-year-olds attend publicly supervised and subsidized kindergartens. The vast majority of Israeli youth continue their schooling beyond the age of 15. Almost all children attend public schools that are regulated by the Ministry of Education, with funding from the Ministry as well as local authorities. Some secondary schools are operated by voluntary organizations, but remain part of the governmental education system. Entirely private schools that operate outside this system are relatively rare, and are found primarily in the Arab sector and among the ultra-orthodox Jewish population.

783. Under the Schools Supervision Law, 5729-1969, schools regulated by the Ministry are required to maintain standards of health and hygiene, security, curriculum, physical plant, pedagogic training and quality, and financial solvency. No teacher may be employed unless he or she has a permit to do so

from the Ministry of Education, Culture and Sport; the Director-General of the Ministry may refuse to grant a teaching permit if, among other things, it has been shown that the teacher's behaviour has a harmful influence on the students (sect. 16 of the Law).

784. The public education system is organized in two main sectors: Jewish (serving 83 per cent of all students) and non-Jewish (Arab, Druze, Christian and other religious minorities), each with its own curriculum and institutions. The Jewish educational sector has three different streams - State-secular, State-religious and independent (primarily ultra-Orthodox) - each of which has separate schools.

785. **Special education**. The Ministry of Education operates a series of special education programmes and facilities free of charge for eligible youth between the ages of 3 and 21. Under the Special Education Law, 5748-1988, children with physical, mental or learning disabilities or behavioural disorders are entitled to special education at an appropriate institution in their residential area or as close as possible thereto. The policy of the Ministry of Education has been, to the extent possible, to place such children within the regular school system, either in special education classes or in regular classes with supplementary tutoring. This policy has been implemented primarily in the case of hearing- and visually-impaired children. The Special Education Law also mandates adequate training for full-time special education teachers, an individual study plan for each child, and the provision of para-medical and psychological services for special education students.

786. The Ministry of Education offers a series of support services for children who have problems adjusting to a school environment, in addition to those services provided by the welfare agencies. These services include counselling and psychological assessment, afternoon programmes, running drop-in centres, remedial classes with special budgets to permit smaller size classes, a "Grade 13" programme for students who complete the 12th grade without having fulfilled the subject requirements for a matriculation certificate, and others.

787. Boarding schools are attended by approximately 10 per cent of the school population aged 13 to 18. Historically, boarding schools were used primarily by refugees prior to and after the Second World War who arrived without their parents. Today, the boarding schools are attended by new immigrants, primarily from the Former Soviet Union and Ethiopia, and by youth from disadvantaged backgrounds. In addition, many of the better students among orthodox Jewish teenagers attend religious boarding schools. Roughly one-fifth of the boarding school population consists of children who are placed out of the home by the welfare services or the Ministry of Education due to severe family problems or behavioural problems at school.

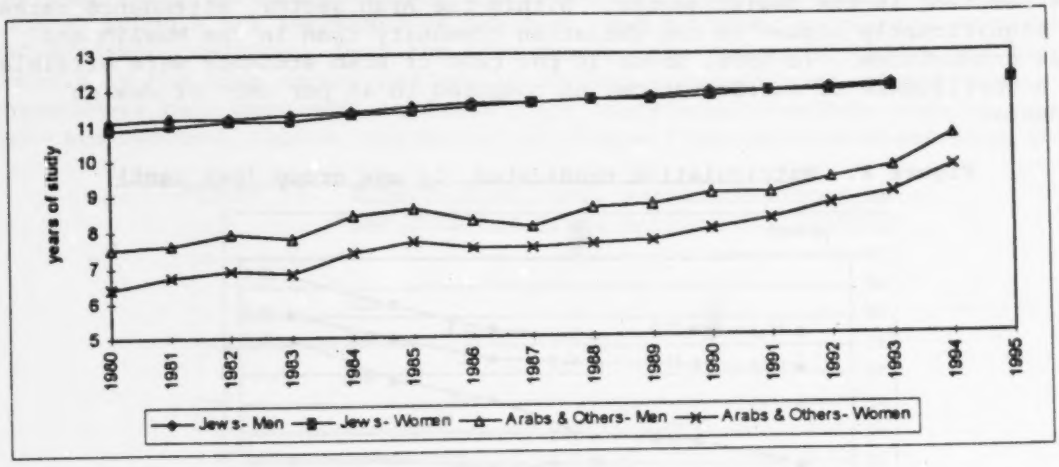
788. **Educational disparities**. The separation of educational institutions into Arab and Jewish sectors, and according to level of religious observance, enables each segment of the population to maintain its language and cultural identity, and limits the possibility of cultural tensions among students within the schools themselves. However, as there is a correlation between religious observance and low socio-economic status in the Jewish sector, and a lower socio-economic status in the Arab sector generally, the separation of

educational tracks may help preserve disparities in educational attainment levels. In general, there remain significant disparities between the Jewish and Arab sectors in the number of years of schooling completed, in the levels of school attendance, particularly in kindergartens and after the age of 14, in the number of students per class, and in the level of support services and facilities. At the same time, there have been dramatic improvements in many of these areas over time. In 1975, 35.8 per cent of the Arab population had four years or less of education, compared to 11.9 per cent of the Jewish population; by 1992, the proportion of persons with four or less years of schooling decreased to 18.1 per cent in the Arab population and 6.2 per cent in the Jewish population. Over the same interval, the proportion of students completing at least 13 years of education rose from 4.5 per cent to 10.0 per cent in the Arab sector, and from 17.7 per cent to 31.2 per cent in the Jewish sector.

Table 17. Population with 0-4 years of education

Jews				Arabs and others			
Sex and age	Thousands	Years of schooling (per cent)		Sex and age	Thousands	Years of schooling (per cent)	
Women		0	1 to 4	**Women**		0	1 to 4
Total	1 681.30	4.3	2.1	Total	318.2	13.6	6.6
15-17	111.4	0.1	0.3	15-17	34.1	2	0.7
18-24	260.8	0.5	0.2	18-24	74.1	2.9	1.5
25-34	302.5	1	0.4	25-34	83.9	3.6	3.2
35-44	311.4	1.5	0.4	35-44	54.3	8.7	9.5
45-54	232.6	2.5	1.4	45-54	32.2	31.6	18.9
55-64	178.8	11.3	5.5	55-64	20.8	47	19.6
65+	283.8	13.3	6.7	65+	18.8	67.1	8.2
Men				**Men**			
Total	1 588.00	1.7	1.8	Total	315.7	4.1	5
15-17	118		0.2	15-17	35.7	1.6	1.3
18-24	271.2	0.4	0.4	18-24	76.4	0.9	1.1
25-34	307.9	0.7	0.5	25-34	83.9	1.1	1.4
35-44	302.2	0.8	0.4	35-44	53.2	3.1	10.7
45-54	219.8	1.5	0.8	45-54	32.1	5.1	3.4
55-64	156.6	3.6	4.4	55-64	19.5	13	23
65+	212.2	6.3	7.3	65+	14.9	34.6	24.5

Figure 7. Median number of years of study of persons over 15



789. School attendance rates for both Jewish and Arab children aged 5 to 13 are well above 90 per cent. Prior to age 5 and after age 13, however, there are significant differences between the two populations. Approximately 95 per cent of all Jewish children also receive pre-school education, as compared to an estimated 44 per cent of Arab three-year-olds and 71 per cent of Arab four-year olds. In the 14-17 age group, the discrepancy in attendance rates increases with age, as indicated in the following table:

Table 18. Attendance Rates in regular education frameworks, by age and sector (per cent)

Age	Jewish sector	Arab sector
2	68.6	
3	95.0	44.0 (est.)
4	99.0	71.0 (est.)
5	99.5 (est.)	90.0 (est.)
13	95.5	95.8
14	99.9	75.5
15	97.8	72.4
16	94.3	59.0
17	88.5	54.4

790. Nevertheless, a dramatic increase in attendance rates may be noted over the last 25 years, and a corresponding narrowing of the gap in attendance rates between Arabs and Jews. In the 14-17 year-old group, for example, attendance rates in the Arab sector rose from 29.4 per cent in 1969-1970 to

64.4 per cent in 1991-1992, as compared to a rise from 66.8 per cent to 91.8 per cent in the Jewish sector. Within the Arab sector, attendance rates are significantly higher in the Christian community than in the Muslim and Druze communities. In 1994, about 30 per cent of Arab students were eligible for a certificate of matriculation, as compared to 48 per cent of Jewish students.

Figure 8. Matriculation candidates, by age group (per cent)

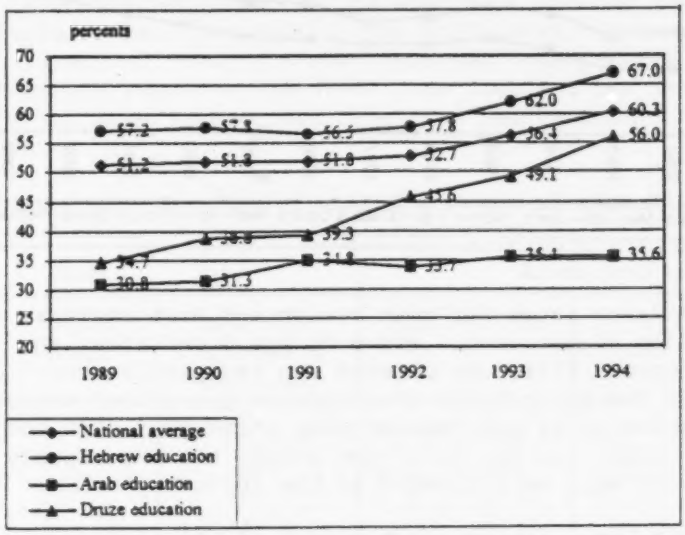
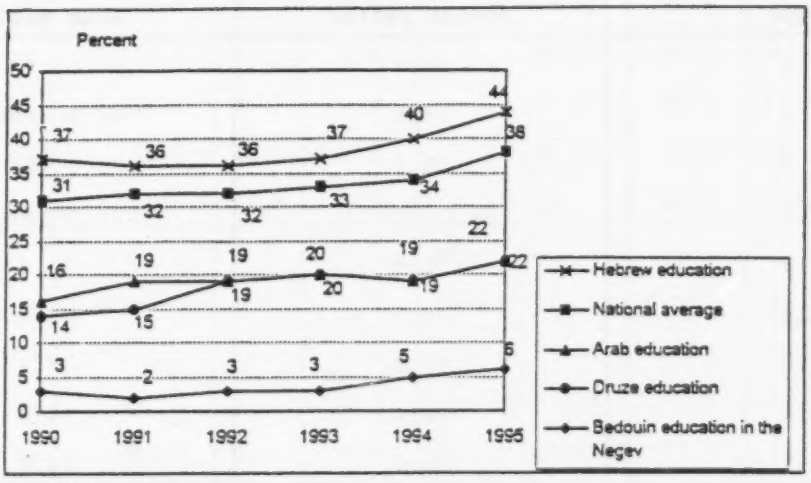


Figure 9. Percentage of those entitled to matriculation certificates by age group*

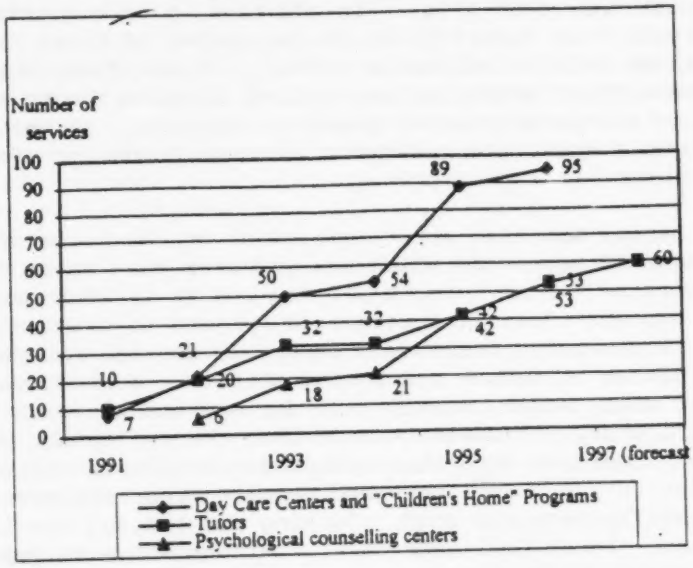


* Age 17 in the population.

791. In 1995, the average number of students per class was 27.4 in the Jewish sector and 30.9 in the Arab sector. During the period from 1980 to 1995, the average number of students per class declined in the Arab sector (31.1 in 1980), while it actually increased in the Jewish sector (25.8 in 1980). Over the last several years, the Government as well as private institutions have initiated programmes to eliminate the gaps in educational services between the

Jewish and Arab sectors through increased funding and special programmes. In the four years between 1989-1990 and 1993-1994, the total number of teachers in Arab schools has increased 24 per cent, and a higher percentage of teachers had academic training. Over the last decade, the number of middle and high schools in the Arab sector has nearly doubled. In addition, significant investments have been made in funding for educational services such as day-care centres, tutors, psychological counselling and home-based programmes.

Figure 10. Expansion of pupil support services in the Arab and Druze sectors (1991-1997)



(Other government educational programs in the Arab and Druze sectors are discussed under articles 26 and 27)

Child Labour

792. Israel is a party to International Labour Organization (ILO) Convention (No. 138) concerning minimum age for admission to employment. Except in special circumstances, the minimum age of employment in Israel is 15. In practice, however, the effective minimum age is 16, as the Child Labour Law, 5713-1953, generally forbids employment of 15-year-olds if they have not yet fulfilled their compulsory education requirements, unless the Minister of Education, Culture and Sport specifically exempts the child from completing his or her compulsory education, or unless the child is employed in an approved apprenticeship programme, as discussed below. Minors 14 years of age or older may be employed during school vacations, in light work which will not harm his or her health or development (Child Labour Law, 5713-1953, sects. 2, 2 A). By approval of the Minister of Labour and Social Affairs, children under 15 may be employed in artistic performances, subject to any conditions the Minister may deem fit to safeguard the child's health as well as his or her physical, educational and moral development, and to ensure that the child has at least 14 hours' rest from one work day to the next (sect. 4 of the Law).

793. The Child Labour Law also enables the Minister of Labour and Social Affairs to forbid or restrict employment of minors under 16 in any place or type of enterprise which is likely to harm the child's health, welfare, or development. Recently-enacted regulations forbid employment of a child in work involving exposure to underground mines, wells or sewage, explosives, cleaning motor engines, lifting cranes, a range of heavy machinery and cutting instruments, highly flammable substances, certain types of laser instruments, extreme hot or cold temperatures, dangerous or poisonous organic substances, mental hospitals or hospital departments which pose a risk of contracting infectious diseases, and others (Child Labour (Prohibited or Restricted Employment) Regulations, 5755-1995). In addition, jobs requiring manual lifting and carrying bear restrictions on the number of hours of heavy exertion and maximum weights allowable (ibid.). A child may not work in any job until he or she first passes a free medical examination to ensure that labour involved is within his or her physical capacity. In certain types of potentially hazardous jobs, the child must undergo annual or semi-annual medical examinations.

794. The Child Labour Law also sets limitations on the hours of work and rest of all minors under 18 years old which are stricter than those for adults. Minors may not work more than 8 hours per day and 40 total hours per week, and an employer who exceeds these limitations is subject to criminal penalties. Night-time work is generally forbidden, except in special circumstances by permit of the Minister of Labour and Social Affairs. Working youth have the right to a longer daily break, weekly rest day and annual vacation than adults. Other statutory provisions ensure that the employment of all minors under 18 will not interfere with their education or vocational training (Child Labour Law, sects. 20-27). Employers who deprive minor employees or apprentices of legally-required food, clothing and lodging are liable to three years' imprisonment (Penal Law, sect. 366). Minors who work enjoy all of the rights given to adults under Israeli labour law in such matters as wages, severance pay, and other benefits.

Other measures of protection

795. Israel has ratified several conventions which bear on the protection of children, including the Geneva Slavery Convention of 1926 and the Amending Protocol of 1953; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. In addition to criminal sanctions for child abduction, Israeli law has incorporated the Hague Convention on the Civil Aspects of International Child Abduction of 1980 into domestic law, making the provisions of that convention enforceable in Israeli courts (Hague Convention (Return of Abducted Children) Law, 5751-1991). The International Division of the Ministry of Justice, reporting to the Attorney-General, bears primary responsibility for handling cases of international child abduction.

796. Among the other legislative measures aimed at protection of children the following may be noted:

(a) The Helpless Persons Protection Law, 5726-1966, prohibits various forms of exploitation of children under 14 years of age, or any disabled minor, by an adult responsible for the child.

(b) The content, language, and presentation of advertisements intended for children are regulated so as to avoid exploitation of children's innocence or impressionability for commercial ends, creation of peer pressure to buy a certain product or service, gratuitously violent, frightening or sexually inappropriate advertisements, or the encouragement of dangerous or illegal behaviour (Consumer Protection (Advertisement Directed at Minors) Regulations, 5751-1991).

(c) An interministerial committee was set up following the Stockholm Conference to develop adequate legislative and other safeguards against commercial sexual exploitation of minors. The committee's report and recommendations are currently being reviewed by a Knesset committee, and a bill creating new criminal sanctions against those involved in child prostitution is currently pending.

(d) Children's games and playgrounds must meet a series of safety and health specifications.

797. Recent legislative activity bearing on the protection of children includes an amendment to the Youth (Treatment and Supervision) Law that makes it a criminal offence to publish any pictures of naked children under nine years old (sect. 24 of the Law); and an amendment to the Execution Law, 5727-1967 that prohibits the carrying out of an order to garnish property at a debtor's home in the presence of a child alone.

Registration and nationality

798. Under the Population Registry Law, 5725-1965, the Population Registry must be notified within 10 days of all births which occur in Israel, either by the director of the institution at which the birth occurred, or, in the event that the birth did not occur at an institution, by the parents of the child and the physician and midwife who attended to the birth (sect. 6 of the law). Every person so registered must be given a surname and first name, with special provisions for cases in which the parents have different surnames or are unmarried at the time of birth. Where the parents fail to agree on the child's first name, each of them may give the child a name (Names Law, 5716-1956, sects. 2-4).

799. As discussed under article 2, all persons born in Israel at the time that one of his or her parents was an Israel national is an Israeli national. The same rule applies whether or not the parents were married at the time of birth. If the child is born after the death of one of its parents, it is sufficient if such parent was an Israeli national at the time of his or her death. Children born outside of Israel also acquire Israeli nationality if at least one parent acquired Israeli nationality by the Law of Return, by virtue of residence in Israel, by naturalization or by having been born in Israel of at least one Israeli parent. When the parents of a child born in Israel are both permanent residents, then the child automatically acquires permanent resident status, which entitles the child to the full range of social and

health-care benefits accorded to nationals. When one parent is a permanent resident and the other is neither a permanent resident or a national, then the child acquires the status possessed by his or her father or guardian, unless the other parent objects (Entry into Israel Regulations, 5734-1974, regulation 12). In the latter case, the policy followed by the Minister of Interior is to grant permanent residency status to such children upon a factual showing that the child's life is centred in Israel.

800. **Participation of minors in armed conflict**. As a general matter, persons below the age of 18 may not be drafted into the Israel Defence Forces or other security services. In certain circumstances, a minor who has reached the age of 17 may enlist for his or her regular army service with parental consent.

Article 25 - Access to the political system

801. The right to vote is the principal mechanism for participating in the Israeli political system. All citizens at least 18 years of age are entitled to vote, without distinction as to gender, race, colour, ethnicity, wealth, property, or any other status (Basic Law: Knesset, sect. 5). While a person may be denied the right to vote only by judgement of a competent court pursuant to valid legislation (Basic Law: Knesset, sect. 5), no statutory provisions have yet been enacted to enable denial of the right to vote. However, the technical requirement that a person "may vote only at the polling station where the list of voters includes his name" (Knesset and Prime Ministerial Elections Law [Consolidated Version], 5729-1969 (hereinafter - the Elections Law), sect. 7) has in the past prevented hospitalized persons, diplomatic personnel abroad, prisoners and detainees, and citizens temporarily outside of the country from voting. Over the past decade the Knesset, recognizing that considerations of administrative convenience should not operate in a manner that restricts such a fundamental right, has enacted several amendments to the Elections Law guaranteeing the exercise of the right to vote for prisoners and detainees (1986), for diplomatic and consular personnel (1992) and for hospitalized persons (1996). The Elections Law also includes special arrangements for voting by persons in active military service, police, prison staff, and persons serving on Israeli sea-going vessels (sections 89-116 of the Law). The expense of transporting voters in Knesset elections to and from the ballot station is paid for out of the State Treasury if on election day they are not in their permanent place of residence (Party Financing Law, 5733-1973, sect. 18).

802. Beginning with the national elections to the current 14th Knesset, which were held in June 1996, Israeli citizens elect the entire Knesset and the Prime Minister at the same time, but by separate ballots. Formerly, national elections were held only for the Knesset, and the candidate, typically the head of a party list, who was deemed to have the best chances of forming a Government was invited by the President of the State to do so within a limited time period. If that person succeeded in doing so, then the head of that party's list would become Prime Minister. Under the new system, the Prime Minister is elected by direct ballot; the Prime Ministerial candidate who receives the most votes is similarly invited to try to form a governing coalition, even if his or her party did not receive the most votes in the

Knesset elections. National elections are "direct", in the sense that there are no electors or other intermediaries. Knesset members are not elected from particular geographical districts, but as part of a national party list.

803. **The right to run for national public office**. Any citizen 21 years of age or more may run for Knesset, subject to three sets of exceptions. First, if a person has been sentenced to imprisonment for at least five years for certain offences against State security, and five years have not yet passed since the end of that term of imprisonment, then the person is ineligible to run in national elections. Second, a court may deny an individual the right to run for office pursuant to legislation (Basic Law: Knesset, sect. 6 (a)); as a practical matter, however, no such legislation exists. Third, several public officials are precluded from running for election to the Knesset by virtue of their position: the President of the State, the two Chief Rabbis and other members of clergy who earn wages from their religious function, any active judge of a general or religious court, the State Comptroller, the IDF (Israel Defence Forces) Chief of Staff, Police and Prisons Service personnel, and senior public servants and army officers of certain rank (sect. 7 of the Basic Law). Such senior public servants or army officers may run for national election if they leave office at least 100 days prior to the elections (Elections Law, sect. 56 (A1)). Other, less senior public servants and military personnel may run for elected office so long as they vacate their positions by the date of submission of the candidates list; if elected, they are deemed to have ceased their service so long as they remain members of Knesset (Elections Law, sect. 56 (b)). Dual nationals may run for election to the Knesset, but if elected they may not take the oath of office until they have taken all steps necessary to relieve themselves of the other nationality, nor will they hold the rights of Knesset members until they do so (Elections Law, sect. 16 A).

804. Candidates for the Office of Prime Minister must meet all of the above conditions for Knesset candidates, with the exception that the minimum age is 30 years. In addition, the Prime Ministerial candidate must generally be the head of a list of candidates for Knesset elections; in special Prime Ministerial elections, which are to be held only in extraordinary circumstances, such as when no Prime Minister is elected by the normal process, or the elected Prime Minister fails to present a government within the 45-day statutory time limit, or the Knesset decides, by a majority of at least two-thirds of the entire House, to remove a serving Prime Minister from office, the Prime Ministerial candidate need not be the head of a party list, but merely a member of Knesset (Basic Law: Government, sect. 8).

The election process

805. **Proposal of Knesset Candidates List**. Only registered political parties may propose candidates for Prime Minister or for the Knesset (Elections Law, sect. 4; Basic Law: Government, sect. 9). A political party may be constituted by a group of 100 people, provided that they meet the requirements of the Parties Law. Aside from technical registration requirements, the Parties Registrar may refuse to register a political party on the same grounds that were earlier enacted to enable disqualification of a list of Knesset candidates: that is, if the party, by its purposes or actions, may be deemed to negate the existence of the State of Israel as a Jewish and democratic

State; to incite racism; or if there is reasonable basis to conclude that the party will serve as a cover for illegal activity (Parties Law, section 5). Having met this standard, the political party may propose a list of up to 120 Knesset candidates. The candidate list is chosen by internal party primaries, by the party central committee or by other mechanisms, according to rules adopted by each party. A recent amendment to the Elections Law repealed the precondition that at least 1,500 voters confirm their support for the candidate list (Knesset and Prime Ministerial Elections (Amendment No. 31) Law, 5756-1996). The formal barriers, then, to proposing a list of candidates for election to the Knesset have become almost symbolic.

806. **Proposal of Prime Ministerial Candidate**. Under the new electoral system in Israel, the nomination procedures for the Prime Ministerial elections are rather thoroughly linked to those for the Knesset elections. An incumbent Knesset faction, or group of factions, holding at least 10 Knesset seats may nominate a candidate for Prime Minister, so long as they have filed a list of Knesset candidates for the impending elections. A party which holds no seats in the current Knesset, but has duly filed a list of Knesset candidates for the impending elections, may also nominate a candidate for Prime Minister if it can provide written confirmation of 50,000 registered voters for their candidate (Basic Law: Government, sect. 9). In the event of an extraordinary Prime Ministerial election, the parties not represented by a Knesset faction may not nominate a candidate (ibid.).

807. Knesset and Prime Ministerial elections are overseen by a three-tiered system of election committees: local Ballot Committees and Regional Election Committees, which carry out largely technical functions; and the Central Elections Committee, which is chaired by a Justice of the Supreme Court and is responsible for the lawful organization and holding of elections. Among other things, the Central Elections Committee must approve or disqualify each list of candidates and its identifying symbol or letters, which are used in election propaganda and on the ballots themselves; it must approve all broadcast election propaganda for compliance with statutory restrictions; it has quasi-judicial powers to rule on all complaints regarding acts or omissions under the Elections Law; and it publicizes the results of the elections. A list of candidates may be disqualified not only for technical reasons, but also, once again, if its platform or actions clearly and substantially evinces an intention, explicitly or by implication, to negate the existence of Israel as the State of the Jewish people, to negate the democratic character of the State, or to incite to racism (Basic Law: Knesset, sect. 7 A). Approval or disqualification of candidates' lists by the Central Election Committee may be appealed to the Supreme Court. The Court has twice upheld disqualification of a list by the Central Election Committee: first, in 1965, prior to the enactment of substantive standards for disqualification, the Court upheld the disqualification of the "Socialist List" based upon a finding that the party's platform aimed to "undermine the existence of the State" (E.A. 1/65, *Yardor* v. *Central Elections Committee of the Sixth Knesset*, 19(3) P.D. 365). Later, following enactment of section 7 A of Basic Law: Knesset above, the Court upheld the disqualification of the Kach Party, led by the late Rabbi Meir Kahane, for negating the democratic character of the State and incitement to racism (E.A. 1/88, *Neimann* v. *Central Elections Committee of the Twelfth Knesset*, 42(4) P.D. 177). Section 7 A actually had been enacted following a 1984 Supreme Court decision which

overruled the disqualification of the same "Kach" Party list in the previous elections, on the ground, among others, that the right to be elected should not be limited without explicit statutory authorization (E.A. 2,3/84, *Neiman v. Central Elections Committee of the Eleventh Knesset*, 39(2) P.D. 225). The approval of a candidate list by the Central Elections Committee may also be appealed to the Supreme Court by the Attorney-General, the Chairman of the Committee or one-quarter of its members, on the grounds that the list falls under the ambit of one of the prohibitions in section 7 A of the Basic Law above-mentioned (Elections Law, sect. 64 (A1)).

808. Citizens cast their ballots in booths which ensure their privacy. Special booths suitable for use by disabled persons are required by law (Elections Law, sect. 68 A). The presence of persons at the voting facility is limited to a closed list of persons associated with the election committees, election observers or police personnel whose presence is necessary, in the opinion of the ballot committee, to ensure order (sect. 73 of the Law). Upon presenting one's personal identity card, the voter is given two envelopes, one each for the Knesset and Prime Ministerial elections. Inside the voting booth, the voter selects the slip containing the name of the Knesset list (or Prime Ministerial candidate) of his or her choice in the appropriate envelope, and places the sealed envelope into the ballot box in the presence of the local ballot committee (sects. 74 A, 75 of the Law). The voting slips, as well as instructions for voting posted inside each booth, are printed in Hebrew and Arabic. Persons who due to illness or disability are unable to follow the above procedure alone may be accompanied by an assistant, whose identity is registered in the protocol of the ballot committee.

809. The 120 Knesset seats are divided among the candidate lists according to the proportion of the total popular vote received by each of them, with two important exceptions: first, a party must pass a statutory threshold of 1.5 per cent of the total national vote to be given a Knesset mandate. Second, as a practical matter of arithmetic, the division of the popular vote into the 120 Knesset mandates leaves one or more Knesset seats to be allotted among the rival lists according to the proportion of "extra" votes received by the lists, under a special procedure prescribed by statute (Elections Law, sects. 81-82). Members of ethnic and religious minorities and of other groups protected under the Covenant vote for Knesset lists along the entire political spectrum. In addition, as discussed under article 27, Arab political parties have been represented consistently in the Knesset, as is the case in the current, fourteenth Knesset.

810. The results of national elections may be appealed to the District Court for any illegalities in the conduct of the election, in the division of votes and mandates, or in the manner in which votes were secured for a particular candidate list, provided that the alleged illegality might have influenced the outcome of the elections (Elections Law, sect. 86). The Court is empowered to annul the elections and to order new elections, to determine the correct distribution of Knesset mandates among the rival lists, or to declare that a particular member-elect of Knesset will be replaced by another person (ibid). The Court also may annul the voting results at a particular polling station if there is sufficient evidence of procedural irregularities.

811. **Local and municipal elections**. The fundamental right to vote and be elected applies as well to participation in local government. (*Burstein et al.* v. *Minister of Interior et al.*, 42(4) P.D. 462.) A series of statutes regulating elections of mayors, municipal and local councils generally mirror the arrangements for national elections, including the requirement that elections be "equal", "general", "secret", "direct" and "proportional"; the right of all persons 18 years of age and over who reside in the municipal area in question to vote in such elections; the right to run for election, subject to exceptions for judges, convicts, those lacking legal capacity, and certain classes of civil servants; and the right to propose candidate lists. (See Local Authorities (Elections) Law, 5725-1965.) For the purposes of this article, the principal differences between local and national elections are that non-citizen residents may vote in local elections, but not in national elections, and that persons who have been declared bankrupt by a competent court are ineligible to run for local office (sects. 7 (8), 13 of the Law).

812. In certain non-urban areas, local and regional government is regulated by laws which do not explicitly require that elections be equal. (See, e.g., Local Councils Ordinance [New Version], N.V. 256, sects. 2, 3, 38.) Nevertheless, the Supreme Court has applied the principle of equality and the right to run for local public office to invalidate ministerial orders enacted pursuant to such legislation which restricted the right of residents of certain cooperative settlements to be elected to the local council unless they already serve as directors of a parallel entity within their community. (H.C.J. 753/87, *Burstein* v. *Minister of Interior*, supra.)

813. **Women and ethnic minorities in public office**. For a discussion of the participation of women in national and local political life, reference is made to the discussion under article 3, and to Israel's initial and first periodic report to the Committee for the Elimination of All Forms of Discrimination against Women. The participation of members of ethnic minorities in political life is discussed under articles 26 and 27.

814. **Campaign financing**. Since the 1970s, political parties running for election to the Knesset receive campaign funding from the State Treasury, in an amount based on the number of mandates they win in the election in question. Under current law, a three-member public committee headed by a judge determines the amount of the "funding unit" for a given election (Party Financing Law, 5733-1973, sect. 1 A-B). Following publication of the election results, parties which were not represented in the outgoing Knesset receive an amount of "funding units" equal to the number of mandates they won in the election, plus an additional funding unit; parties which were represented in the outgoing Knesset receive an amount of "funding units" based on the average between the number of mandates they held in the outgoing and incoming Knessets, respectively, plus an additional funding unit (sects. 2 and 3 of the Law). Other parties which fail to win a Knesset mandate, but receive at least one per cent of the popular vote, receive an amount equal to one "funding unit" (sect. 2 (A1) of the Law). The Party Financing Law also sets limits on campaign expenses based on the number of mandates each party holds in the outgoing Knesset, on the expenses of parties not represented in the outgoing Knesset, and on the amount of individual campaign contributions (sect. 7 of the Law). In this manner, the statutory arrangements attempt to preserve substantial equality of the economic resources available to the parties

contending for election. In a line of important precedents, the Supreme Court, recognizing that "economic inequality among the various [Knesset] factions creates inequality of political rights" (H.C.J. 141/82, *Rubinstein* v. *Chairman of the Knesset*, 37(3) P.D. 141, 153), has intervened in parliamentary decisions regarding campaign financing which are deemed to violate the requirement in section 4 of Basic Law: Knesset that Knesset elections be "equal". For example, the Court held invalid an amendment to the Party Financing Law which conferred retroactive legitimacy on campaign spending well above the statutory limit by several parties which ran for election to the tenth Knesset, holding that such a violation of the equality principle could be approved only by an absolute majority of the Knesset, under the terms of the entrenchment clause in Basic Law: Knesset. (H.C.J. 141/82, *Rubinstein* v. *Chairman of the Knesset*, supra.) More recently, the Court annulled a decision by the Knesset Affairs Committee which retroactively changed the amount of the "funding unit" following the elections to the twelfth Knesset, in a manner which appeared intended to cover overspending by the ruling Likud faction. (H.C.J. 2060/91 *MK Ran Cohen et al.* v. *Dov Shilansky et al.*, 46(4) P.D. 319.) In the aftermath of this latter judgement, the Knesset amended the Party Financing Law to give the authority to determine the "funding unit" to the external public committee as mentioned above, replacing the Parliamentary Affairs Committee of the Knesset.

815. The financing of Knesset election campaigns by political parties is subject to thorough oversight by the State Comptroller, and parties which exceed the spending limit may be obligated to pay the State Treasury the difference between allowed and actual expenses.

Access to public service

816. The State of Israel employs more than 83,000 civilian employees.* With very few exceptions, as discussed below, civil servants are selected pursuant to legislation and the Civil Service code of bylaws, known as the *Takshir*, which establishes a merit-based civil service system. The State Service (Appointments) Law, 5721-1961, generally requires that civil servants be appointed through a competitive tender process which clearly defines minimum qualifications for the position in question. In the case of certain positions, such as the director-general of Government Ministries or Government companies, applicable legislation allows for appointments based on political affiliation (see State Service (Appointments) Law, 5721-1961, sects. 12, 23), although all appointments to such positions are reviewed by an impartial

---

* Source: *Statistical Abstract of Israel, 1996*. This number includes permanent, special contract and temporary employees of Government Ministries and other bodies directly related to them. It does not include the staff of the President's office, the Knesset staff, the State Comptroller's office, the Attorney-General, judges and judges in rabbinical courts, teaching staff of the educational system, the staffs of the Employment Service and the National Insurance Institute, the Airport Authority, Bezek - Israel Communication Company, the Postal Authority, Israel Railways, local staff in embassies abroad, soldiers and civilians employed in the army, and the staff of the security authorities.

committee headed by a retired judge, to ensure adequate professional qualifications. In addition, Government Ministers may choose certain personal aides without a tender for positions which are deemed to involve a particularly high degree of personal trust, such as spokesperson, bureau director, secretary, advisors, and driver. While no official statistics are available as of the submission of this report, it is estimated that roughly one government service position in one thousand is filled without a tender, not including temporary appointments.

817. Several layers of legislation aim to protect against discrimination in access to the civil service. Both the Employment Service Law, 5719-1959, and the Equal Opportunity in Employment Law, 5748-1988, which apply to private and public employers generally, forbid discrimination among job applicants on the basis of religion, race, nationality or national origin, sex, sexual orientation, age, personal or marital status, personal worldview or political affiliation. These provisions apply, mutatis mutandis, to civil service hiring without a tender, to terms of employment, promotion, on-the-job professional training, and termination of employment. The State Service (Appointments) (Tenders and Examinations) Rules, 5721-1961, obligates members of tender committees to avoid as much as possible questions relating to controversies between political parties. (See also *Takshir*, paras. 11.61 and 12.367, and Civil Service Commissioner Notice 56/12.)

818. Despite the legislative guarantees of equal access to the public service, the actual representation of women and ethnic minorities in the civil service is still far from adequate. Though women constitute roughly 60 per cent of all civil servants, for example, they are on the whole vastly underrepresented in senior positions. To help redress this entrenched phenomenon, the Knesset enacted in 1995 an amendment to the State Service (Appointments) Law requiring that members of both sexes be adequately represented in the civil service, and imposing a duty on the Civil Service Commissioner to remedy unequal representation of members of either sex in a particular ministry, department or type of position, including through affirmative action programmes. Since the above amendment, the Civil Service Commissioner has drafted guidelines for promoting women's representation in the civil service which, among other things, require governmental bodies to report on the number of women employees and their distribution according to rank, as well as on job vacancies and tenders. In addition, even prior to the amendment, the Civil Service Bylaws (*Takshir*) was amended to require that tender committees for civil service positions must include members of both sexes as for the results of the tender (that is, the selection of a particular person for the position in question) to be lawful (Civil Service Bylaws, sect. 11.461).

819. Arabs and Druze are also under-represented in the government service as a whole. In 1994, the Government decided to take affirmative action measures to enhance the integration of Arabs and Druze into the civil service, among other things by issuing tenders for mid-level positions solely to members of those minorities. Between 1 January 1994 and April 1996, 661 Arabs and Druze were appointed to government service posts. At present there are roughly 2,300 members of ethnic or national minorities in the government service (not including the Israel Police, the Prisons Service, or those bodies mentioned above), out of a total of roughly 50,000. Employees in local and regional

government bodies largely reflect the demographic composition of the locality or region. In the 88 local councils or municipalities which serve towns and settlements in which the population is primarily composed of Arabs, Druze, Bedouin or Circassians, the employees of the local government bodies are almost exclusively composed of members of those minorities. In larger municipalities with mixed populations, such as Jerusalem, Haifa and Lod, members of minorities are employed at a level which approaches their representation in the population, although less so at the most senior levels.

Foreign nationals

820. As mentioned above, only Israeli citizens may run for election to the Knesset or the office of Prime Minister. In addition, the President of the State, the State Comptroller, members of the Postal Authority Council and the Jerusalem Development Council, the Chief Rabbis, judges in courts of general jurisdiction, and judges in Jewish, Muslim and Druze religious courts must be Israeli citizens. Dual nationals who are candidates for election to the Knesset, the office of Prime Minister or for judicial appointment in the general courts bear a special statutory obligation to take all steps necessary to be relieved of their other nationality (Basic Law: Knesset, sect. 16 (a); Courts Law [Consolidated Version], 5744-1984, sect. 5).

821. Employment of aliens in the civil service is also restricted. Under section 16 of the State Service (Appointments) Law, 5719-1959, only an Israeli national may be formally appointed as a civil servant. However, foreign nationals may be hired under "special contracts", which may be renewed periodically. Civil servants with dual nationality are not required to relinquish their other nationality.

Article 26 - Equality before the law

Other international conventions

822. Israel is a party to several international conventions bearing on the prevention of discrimination, including the International Convention on the Elimination of All Forms of Racial Discrimination (seventh, eighth and ninth periodic reports submitted in July 1997); the Convention on the Elimination of All Forms of Discrimination Against Women, since 1991 (initial and first periodic report filed in March 1997); the International Covenant on Economic, Social and Cultural Rights, since 1991 (Israel's initial and first periodic report submitted in November 1997); the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111), since 1959 (Israel's most recent report relates to 1992-1993); the ILO Equality of Treatment (Social Security) Convention 1962 (No. 118), since 1965 (Israel's most recent report covers the period between 1991-1993); the ILO Equal Remuneration Convention, 1951 (No. 100), since 1965 (Israel's last report covers the years 1991-1993). As is the case with the present Convention, these conventions have not been made part of Israel's internal law by Knesset legislation, although they have exerted an important influence on the development of Israeli law, including in legislation and judicial decisions bearing on the promotion of equality. The discussion under this

article, and other related articles in this Convention, substantially covers many of the anti-discrimination concerns dealt with in reports under the above-mentioned Conventions.

The status of the right to equality in Israeli law

823. **Constitutional norms**. As mentioned elsewhere in this report, Israel did not enact a constitution upon its establishment, as called for in its Declaration of Independence. Instead, it has chosen to enact Basic Laws regarding different components of its constitutional regime; these Basic Laws, taken together, comprise a "constitution-in-the-making". In 1992, the Knesset enacted two Basic Laws - Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation - which give written constitutional footing to a series of fundamental individual rights. The general right to equality before the law, however, is not specifically enshrined in these, or in any other of Israel's Basic Laws (only Basic Law: Knesset contains a provision requiring equality in parliamentary elections). Indeed, earlier legislative proposals for a bill of rights which included a general guarantee of equality failed to garner a majority necessary for enactment. The parliamentary history of these earlier proposals, as well as of the initial efforts to enact a constitution after Israel's founding, suggest that the absence of a written constitutional guarantee of equality has derived in no small part from the difficulty in reconciling a comprehensive equality principle with the dictates of religious law, in which equality is not necessarily a paramount value, and from the effect of that value-conflict in the arena of coalition politics.

824. Despite the lack of an explicit, written constitutional guarantee, the right to equality has been firmly entrenched as a binding, overarching principle in Israeli law since the beginnings of the post-independence legal system. Israel's Declaration of Independence, drawing on the Universal Declaration of Human Rights, provides that "[t]he State of Israel will maintain equal social and political rights for all citizens, irrespective of religion, race or sex". Although the Declaration, strictly speaking, lacks binding constitutional force, the Supreme Court has relied on it, as well as on common-law doctrines requiring administrative authorities to act in good faith and consistently with public policy, to establish the right to equality before the law as "the life breath of our entire constitutional regime" (H.C.J. 98/169, *Bergman* v. *Minister of Finance*, 24(1) P.D. 693, 698), and to make that right enforceable in the courts.

825. **Statutory guarantees and judicial development of the right to equality**. In lieu of a constitution, the right to equality has been secured until recently either through specific statutory guarantees of equality in matters such as women's rights and employment, and through the case law, as part of the Supreme Court's painstaking development of an "unwritten Bill of Rights". The first significant equal rights legislation was the Women's Equal Rights Law, 5711-1951. This law prescribes equality of legal status between men and women, requires that "one law" apply to men and women regarding "any legal act", and declares that any law that discriminates against a woman as such shall be null and void. It guarantees equal rights mainly in relation to acts of government authorities, and deals specifically with property rights and

parental rights of married women, but excludes matters of "personal status" themselves, such as marriage and divorce, in which the relevant religious law is dispositive.

826. The Supreme Court's broad development of the right to equality has taken two principal forms: first, in the willingness of the Court, sitting as High Court of Justice, to intervene in the exercise of administrative discretion so as to require all arms of the executive branch to act without unlawful discrimination; and second, by creating a presumption of statutory interpretation under which the purpose of any given statute is presumed to favor the promotion of equality rather than its curtailment, unless the statute explicitly states the contrary. Until recently, the Court, in deference to the constitutional supremacy of the Knesset in the Israeli scheme of government, has refrained from invalidating Knesset legislation which it deemed to violate fundamental rights, including the right to equality; it has, however, invalidated ministerial regulations or administrative policies ("secondary" legislation) on these grounds.

827. The enactment of Basic Law: Human Dignity and Liberty may well elevate the right to equality to full-fledged supreme normative status, superior to any ordinary Knesset statute. Based on Section 1 of the Law, under which "[f]undamental human rights in Israel ... shall be respected in the spirit of the principles in the Declaration of Independence" - i.e., including the guarantee of full equality of political and social rights - several justices of the Supreme Court have already expressed the view that the right to human dignity protected by the Basic Law includes the right to equality - even though a provision in early drafts which specifically guaranteed equality and forbid discrimination was not included in the final text of the Basic Law. (See, e.g., H.C.J. 453/94, *Israel Women's Network* v. *Government of Israel*, 48(5) 501; H.C.J 5394/92, *Huppert* v. *"Yad Vashem"*, 48(3) P.D. 353; H.C.J. 721/94 *"El-Al" Israel Airlines Ltd.* v. *Danilovitz*, 48(5) P.D. 749 (per Barak, D.P.); H.C.J. 5688/92 *Wechselbaum* v. *Minister of Defence*, 47(2) P.D. 812). Another view, espoused by several members of the Court, holds that "the Basic Law protects against violation of the principle of equality when that violation results in humiliation, that is, in a violation of human dignity as such. Such is the case ... in certain types of discrimination against a group, including discrimination on the basis of sex ... and ... race." (H.C.J. 4541/94, *Miller* v. *Minister of Defence* [cite] (per Dorner, J.). As of the submission of this report, the Court has yet squarely to face this issue. To the extent that the Court decides to include the principle of non-discrimination within the ambit of the rights protected by the Basic Law, the Court will be empowered to void discriminatory Knesset legislation which does not comply with the terms of the limitation clause (sect. 8) of the Basic Law.

828. **Elimination of discrimination in the private sphere**. Thus far, discrimination by private actors is prohibited in Israeli law only to the extent that legislation explicitly so provides. Such is the case, for example, with the Equal Employment Opportunities Law, 5748-1988, which prohibits all forms of discrimination by private or public employers; the Goods and Services Supervision Law, 5717-1957, which prohibits any unreasonable refusal to provide goods or services covered by the law; the Patient's Rights Law, 5756-1996, which prohibits discrimination between

patients on the basis of religion, race, sex, nationality, country of origin or any other such grounds; the Council for Higher Education (Accreditation of Institutions) Rules, 5724-1964, which forbid an institution from discriminating between students or in academic appointments on the grounds of race, sex, religion, nationality or social status; and various statutes which ensure gender equality in domestic relations, such as the Spouses (Property Relations) Law, 5733-1973, the Family Violence Prevention Law, 5751-1991, and the Women's Equal Rights Law, 5711-1951. A recently enacted law prohibits automobile insurance companies from gathering information from insurees related to their religion or nationality, in order to prevent the possibility of discrimination in setting insurance premiums (Motor Vehicle Insurance Law, 5758-1998). Over the past several years, the view has been advanced, in *obiter dicta* and by legal scholars, that the rights protected by Basic Law: Human Dignity and Liberty apply in the private as well as the public sphere. (See, e.g., C.A. 239/92, *"Egged" Cooperative Ltd.* v. *Mashiach*, 48(2) P.D. 66; A. Barak, **Interpretation in Law** (vol. III: Constitutional Interpretation) (Jerusalem: Nevo), p. 649 *et seq.*). In any case, there would appear to be a growing tendency in Israeli law to apply the right to equality in the private sphere, while the degree of protection afforded will depend on the specific balance struck by the Court between the right to equality, on the one hand, and countervailing rights in the particular circumstances of each case.

829. **Affirmative action**. In matters of government funding, Israel has long embraced the notion that special allocations or benefits may - and ought to - be made available to members of disadvantaged or needy groups in matters such as housing, teaching hours in schools, and the like. It is only recently that the Government ard the Knesset have instituted policies involving affirmative action in hiring or appointments to public institutions. Two recent legislative acts - a 1993 amendment to the Government Companies Law and a 1995 amendment to the State Service (Appointments) Law - impose a positive obligation to pursue hiring and appointment practices that ensure appropriate representation for women in the civil service and on the boards of government companies, respectively. In addition, the Civil Service Commission has pursued an affirmative action policy over the last several years designed to increase the representation of Arabs, particularly those with academic degrees, in mid-level civil service positions, as discussed under article 27.

830. The Supreme Court's equal rights jurisprudence has evolved in this respect as well. While most of the early decisions adopt a formal, or Aristotelian, conception of equality, over the last decade the Court has repeatedly affirmed a more substantive approach which considers the equality of outcomes, including for members of disadvantaged groups. As a result, the Court has confirmed the legality of government policies and practices which give preferences of various sorts to members of groups singled out for special treatment. For example, in denying a petition filed by a Jew who wished to participate in a special offer to sell housing plots solely to Bedouins at favourable rates, on the ground that the government housing programme impermissibly discriminated on the basis of national or social origin, the Court stated:

> The principle of equality serves the aim of achieving a just outcome. It is not "technical" or "formal" equality that is worthy of protection, but rather substantive equality, that is, equality among equals. Persons, or groups of persons, often differ from one another in their conditions, characteristics and needs, and sometimes it is necessary to discriminate between unequals to protect, encourage and advance the weak or needy.

831. The Court has interpreted statutory affirmative action guarantees expansively, going as far to suggest, without holding, that the purpose of affirmative action is not only to remedy past discrimination, but also to ensure present and future equality (see *Israel Women's Network* v. *Government of Israel*, supra, in which the Court annulled appointments of three men to the boards of directors of two government companies which had no women directors).

832. **Israel as a "Jewish and democratic" State**. Israel aims to be at once a Jewish State and a democracy. This dual political foundation finds its expression not only in the Declaration of Independence, but in Basic Laws and specific statutes. The stated purpose of Basic Law: Human Dignity and Liberty is "to protect human dignity and liberty, in order to entrench in a Basic Law the values of the State of Israel as a Jewish and democratic State" (sect. 1). An amendment to Basic Law: Knesset allows for disqualification of a list of candidates for Knesset elections which, among others rejects "the existence of Israel as the State of the Jewish people", or which rejects "the democratic character of the State" (sect. 7 A). In several areas of law and practice, such as the granting of citizenship to Jewish immigrants under the Law of Return, the residential development activities of the Jewish Agency and the Jewish National Fund, and elsewhere, the State differences exist between the Jewish and non-Jewish populations in different ways that derive from Israel's fundamental identity as a Jewish State. Moreover, Israel acknowledges that over the course of its turbulent history, inequalities have arisen between Jews and non-Jews in the degree to which they enjoy the State support in a variety of fields, many of which are addressed in this report. Nevertheless, Israel remains committed to a policy of closing the gaps in treatment between the Jewish and non-Jewish sectors, and to ensuring equality of social and political rights for all of its citizens. While progress remains to be made in a variety of realms, such as housing and development, pre-school education, funding of religious services, and the integration of non-Jews into senior government positions, important advances have been made in many areas, as described under article 27 and other articles in this report, as well as below under this article.

Equality in employment

833. The Equal Employment Opportunities Law, 5748-1988, is the cornerstone of equal rights legislation relating to the workplace. The law prohibits discrimination in the workplace based on gender, sexual orientation, marital status, parenthood, race, age, religion, nationality, country of birth, political or other orientation. Neither governmental nor private employers may take the above classifications into account in hiring, promotion, termination of employment, training, terms of employment or retirement arrangements of employees, except in special cases where the unique nature of the position makes such classifications relevant. The prohibition of

workplace discrimination in the Law applies not only to explicit discriminatory practices, but has also been interpreted to apply to terms of employment which are non-discriminatory on their face but in fact amount to impermissible discrimination, such as requiring previous military service (which very few Arabs perform) when such a requirement is not relevant to the job in question. Protections offered to women employees which take into account their special needs as women or mothers are not deemed discriminatory, although the Law specifies that any such rights offered to working mothers must be given equally to men who either have sole custody of their children, or whose wives work and have chosen not to use their rights. The Law also recognizes sexual harassment as a form of workplace discrimination subject to civil and criminal sanctions.

834. Violations of the substantive provisions of the Equal Employment Opportunities Law constitute a criminal offence, punishable by a fine. They also entitle the employee to a range of civil remedies including compensation, including when no material damage is proved, and, in appropriate circumstances, enforcement injunctions against the employer. Civil proceedings under the law can be initiated by an employee, a trade union or a voluntary association for the protection of civil rights.

835. The Enforcement Division of the Ministry of Labour and Social Affairs is authorized under the law to investigate complaints by individuals; in 1996, workplaces employing more than five persons were investigated, among others, for possible violations relating to sexual harassment, discrimination in hiring, promotion and wages, exercise of parental rights and discriminatory employment advertisements. Since 1988, relatively few cases of employment discrimination under the law have reached the courts, and most of these have involved the unlawful publication of employment advertisements. One possible reason for the relative paucity of discrimination or harassment suits under the law may be the low damage awards typically determined by the labour courts.

836. The anti-discrimination provisions in the Equal Employment Opportunities Law are mirrored in the Employment Service Law, 5719-1959, which regulates the operations of the government agency that matches public and private employers with persons seeking work. Section 42 of the latter Law forbids the Employment Service, in deciding which prospective employees to send to available positions, from discriminating against any person on the basis of age, gender, race, religion, nationality, country of origin, political affiliation or opinion. The Law also forbids any employer which registers with the Employment Service from refusing to accept any job applicant on the above grounds whether or not that applicant was referred to the employer by the Service (sect. 42). An exception is made, once again, for jobs which by their nature make any of the above classifications relevant, or which prevent the hiring of a particular person for reasons of State security. The Law further forbids employers from publishing job notices which have the effect of discriminating on the basis of any of the classifications noted above.

837. Similarly, the Hours of Work and Rest Law, 5711-1951, forbids an employer from refusing to hire a person "solely because he has given notice upon being hired, that he does not agree to work on the weekly days according

to a religious prohibition which he observes", and prohibits employers from demanding that an employee obligate to work on his weekly rest day as a condition for being hired (sect. 9 C).

838. Other equal rights legislation in the field of employment relate mainly to gender equality. The Equal Pay (Male and Female Employees) Law, 5756-1996, requires equal compensation for men and women in positions that are "equal in value", which the law defines as any two jobs that demand equal qualifications, effort, expertise and responsibility. Any deviation from this standard of equality requires the employer to prove that non-gender-related circumstances justify the discrepancy in compensation. Employees who are found to have been underpaid may sue for up to 24 months' back wages. The Law empowers the Labour Court to appoint a job-analysis expert at its own initiative, or at the request of either party, to examine the "value" of the two jobs in question; it also allows for the possibility of class action suits, which are rare in the Israeli legal system. Statistical information regarding the implementation of gender equality in the workplace may be found in the discussion under article 3.

839. The Equal Retirement Age (Male and Female Employees) Law, 5747-1987, prohibits employers from forcing women workers to retire earlier than their male counterparts, despite the fact that women may by law elect to do so with full pension rights several years earlier than men. Measures aimed at maintaining equality of status for working mothers are discussed under articles 23 and 24.

Education

840. **Background and legislative provisions**. The Israeli public educational system is divided into several "streams" at the pre-school, primary and secondary levels: State schools, which serve the majority of the Jewish and Arab population; State Religious schools, which serve roughly one fifth of all enrolled students, and retain autonomy with respect to curriculum and pedagogy; and recognized "independent" schools, most of which provide an ultra-orthodox Jewish religious education or a Christian religious education. These independent schools operate as non-profit organizations, financed by the Government. Jewish and Arab schools within the State educational system maintain separate curricula and institutions.

841. The Compulsory Education Law, 5709-1949, as amended in 1991, prohibits any discrimination in acceptance, placement, curriculum or advancement of students on the basis of ethnicity. In addition, the rules of the Council for Higher Education, which accredits institutions of higher learning, prohibit all accredited institutions from discriminating in the acceptance of students and appointment of academic staff on the basis of race, gender, religion, nationality or social status. (Higher Education Council (Recognition of Institutions) Rules 5724-1964, rule 9.)

842. Within the Jewish sector, problems of discrimination have arisen historically in cases where schools have refused, or been reluctant, to accept students of Oriental (Sephardi) extraction. Such overt ethnic discrimination by now is a rare phenomenon, confined mainly to "independent" ultra-orthodox institutions, which receive State funding and are subject to less stringent

supervision by the Education Ministry than State schools. During the last decade, the influx of recent Ethiopian immigrants into the educational system has given rise to a special set of challenges and difficulties. On the one hand, Israel has made an extraordinary effort in bringing the Ethiopian community to Israel and integrating them into the society, including through vast funding for housing and other benefits which are higher than those given to any other group, immigrant or otherwise. On the other hand, the very magnitude of the task of helping an entire community make an abrupt transition to a different culture, society and language has challenged the capacities of a range of government authorities, including in the field of education. The vast majority of Ethiopian youth who arrived in Israel since 1985 were placed initially in separate classes or educational frameworks, necessary to help these students, many of whom had little formal education, to bridge educational gaps. In the first several years following Operation Solomon, the mass airlift of over 20,000 Ethiopians in 1990, roughly 90 per cent of Ethiopian teenagers were sent to boarding schools, where students tend to have lower levels of academic achievement and often come from disadvantaged or distressed backgrounds. A high proportion of all Ethiopian students were placed in separate classes in which all or most of the students were Ethiopian. At the secondary and post-secondary level, a large proportion of Ethiopian students are routed to vocational educational tracks which lessen the likelihood that such students will matriculate and go on to university. Attendance of Ethiopian children in pre-school frameworks has been far lower than the rest of the population, in part due to the inability of their families to shoulder the cost of such programmes. As a result, Ethiopian students have shown significantly lower educational attainments than other sectors of the population on the whole, and delinquency, unheard-of in the Ethiopian community before their immigration, has become a worrisome phenomenon. To respond to the special educational needs of Ethiopian youth, the Education and Absorption Ministries, which bear primary responsibility for the complex task of integrating Ethiopian students into the educational and social mainstream, have initiated special educational enrichment programmes at several schools. In 1992, an interministerial decision forbid schools from placing Ethiopian students in separate classes, and the Ministry of Education issued an order requiring that Ethiopians not make up more than 25 per cent of the student body at any particular school. As a result, the degree of segregation of the Ethiopian students from the general student body has decreased considerably over the last several years. Recently, an interministerial task force has begun to develop a long-term plan for improving the integration of Ethiopian students into the educational mainstream, which is to include training of teachers and supervisors, broader enrichment programmes, an educational evaluation process which emphasizes learning potential rather than standardized performance indicators, and the like.

843. **Education in the Arab sector**. As discussed under article 24, the Arab educational system in Israel has suffered, on the whole, from problems of pedagogical method and quality, from a lower level of educational achievements by students, a relative shortage of adequate facilities and a lower level of government funding in comparison with the Jewish educational system. Over the last five years, the Government has made impressive advances towards equality of the Jewish and Arab educational systems. Hundreds of new classrooms have been built in the Arab sector over this relatively brief period; the number of

middle and high schools in the Arab sector has nearly doubled over the last decade. The number of classroom hours per school and per student have increased dramatically, reaching parity with the Jewish educational system in 1995. In the 1994/1995 school year, a special educational-care index was introduced in the Arab sector, similar to that used in the Jewish system. This index enables a calibration of the needs of each school for additional classroom hours, and has resulted in the addition of tens of thousands of classroom hours, particularly in the neediest schools. The total number of teachers in Arab schools increased 24 per cent between 1989-1990 and 1993-1994, and more of these teachers had proper academic training; 20 Arab academics were hired during the last several years to senior positions, such as school inspectors. The Ministry of Education has instituted technology education programmes in Arab schools, including laboratories in 40 primary schools, 35 middle schools, and 47 high schools, as well as science and technology instructional kits in 15 localities. The drop-out rate among Arab students has declined precipitously over the past two decades, and decreased 30 per cent in a single year (1994-1995); at the same time, matriculation rates and other indicators of academic performance have increased as well. A special educational programme for gifted Arab children was initiated in 1993; in 1996, 1,655 schoolchildren participated in the programme. The Minister of Education recently announced his intention to develop a long-term educational plan for the entire Arab sector. Significant progress remains to be made, together with local government authorities, in nursery and pre-school education, in which the Arab sector suffers from a shortage of facilities and trained staff; in special education, despite increased funding for teaching hours, there remains a severe shortage of facilities, trained personnel, and professional supervision.

844. **Citizenship and residency**. As discussed under article 2, there is a clear difference in the treatment of Jews and non-Jews regarding the acquisition of citizenship. With very few exceptions, any Jew who immigrates to Israel, as well as any Jew born in Israel may automatically become a citizen under the Law of Return. Non-Jews may become citizens through birth, residency, or naturalization. As a result of amendments to the Law of Return, 5710-1950, and the Nationality Law, 5712-1952, almost all Arab residents of Israel are citizens, and all persons born in Israel, regardless of religion, who have at least one parent who is an Israeli citizen automatically become citizens at birth. The principal difference, then, in the acquisition of citizenship between Jews and non-Jews relates to immigrants or persons born in Israel whose parents are not Israeli citizens.

Military service and subsequent entitlements

845. Under the Security Service Law [Consolidated Version], 5746-1986, all permanent residents of Israel, men and women, are obligated to perform military service. In practice, the military does not draft certain sectors of the population, and the Supreme Court has repeatedly held that it will not review the military's exercise of discretion in this matter. With very few exceptions, Christian and Muslim Arabs are not enlisted, while Druze and Circassian men perform their compulsory service, following the request by the heads of their communities in the 1950s to allow their enlistment. Ultra-orthodox Jewish men who can show that they are studying in a religious institute (*yeshiva*) may postpone their military service for renewable periods

of one year, so long as they remain in the *yeshiva* full-time and do not perform any work for pay. The number of Jewish men who have taken advantage of this arrangement has grown roughly fivefold over the last 30 years, reaching a total of approximately 30,000 in 1997. The great majority of them end up performing no military service whatsoever, or an extremely short tour of duty. Others eventually serve a truncated regular tour of duty and are integrated into the military reserves. Several petitions challenging the postponement arrangement for *yeshiva* students for impermissible discrimination on religious grounds were all denied by the Supreme Court. (See, e.g., H.C.J. 40/70, *Becker* v. *Minister of Defence*, 24(1) P.D. 238; H.C.J. 448/81, *Ressler* v. *Minister of Defence*, 36(1) P.D. 81; H.C.J. 910/86 *Ressler* v. *Minister of Defence*, 42(2) P.D. 441). In the last of these challenges, the Court held that the Minister of Defence's reasons for not drafting *yeshiva* students - their doubtful effectiveness as soldiers and other, non-security related reasons - were not sufficiently unreasonable to warrant the Court's intervention. At the same time, the Court indicated that their decision might change if the number of *yeshiva* students granted postponements increased to the point where it significantly affects security considerations. (H.C.J. 910/86, *Ressler* v. *Minister of Defence*, 42(2) P.D. 441, 506). A pending petition to the Court asks that the IDF reexamine the practice of exemptions for *yeshiva* students in light of its dramatic increase over the years.

846. Orthodox Jewish women are exempted from military service if they file a declaration stating that religious reasons prevent them from serving in the IDF, that they observe Jewish dietary laws and do not travel on the Jewish Sabbath (Security Service Law, sect. 40). In practice, a small but significant number of women thus exempted perform one or two years of non-military "national service". Non-Jewish women are not conscripted into military service, although in rare cases they serve as volunteers. Recently, it was decided that non-Jewish women can volunteer for national service, and as a result they are eligible to receive the benefits given to such volunteers.

847. While men bear considerably heavier military obligations than women in Israel, the Supreme Court, in holding that the failure to admit a woman to the Air Force pilot's course amounted to impermissible discrimination, determined that the principle of equality requires that women be allowed to waive their preferential status and to bear the same duties as men. (H.C.J. 4541/94, *Miller* v. *Minister of Defence* (49(4) P.D. 94.)

848. **Benefits given on the basis of military service**. Because the policies of exemption from military service draw a clear distinction on the basis of national origin, benefits granted to released soldiers have been scrutinized closely to ensure that the fact of military service justifies the benefit in question. Until 1994, applicable law granted a series of privileges to released soldiers for a three-month period, including tuition subsidies, preference in acceptance to university and university housing, and preference in hiring for certain positions in public institutions or in job placements through the Employment Service. One particularly problematic benefit was the "released soldier's allowance" which the National Insurance Institute paid to families with at least three children in which at least one family member

served in the military. The underlying justification for the allowance was the increased financial burden that military service placed on the soldier's family, the soldier's own loss of income during the several years of mandatory service, and the desire to grant a veteran's benefit in recognition of military service. In effect, such families received significantly higher "children's allowances" than families - particularly in the Arab sector - in which no one had performed military service. Shortly after entering into office in 1992, the Government led by Yitzhak Rabin initiated a broad reform of veterans' benefit arrangements. The "released soldier's allowance" was eliminated, and the level of children's allowances given to all families was equalized over a three-year period ending in 1997. Moreover, non-monetary benefits, such as preference in acceptance to university and vocational training programmes, were eliminated. Although these benefits were in themselves a legitimate form of aid to released soldiers who had foregone university study or vocational training for at least three years, it was deemed preferable to make all such benefits more directly monetary. Under the Released Soldiers Absorption Law, 5754-1994, soldiers and persons who perform National Service are given a small cash grant upon their release, and may receive an additional grant for purposes such as education, opening a business, or buying housing within five years from their release. In addition, soldiers may apply for partial or total exemptions from university tuition based on economic need, or for parallel tuition exemptions regardless of economic need in certain fields in which there is a proven need for additional personnel. Under criteria applied by the Ministry of Housing and Construction, released soldiers receive an enlarged government-sponsored mortgage for acquiring their first apartment.

Housing and land

849. Over the course of Israel's history, serious disparities between the Jewish and Arab populations in the availability of housing and of land for development have become entrenched. A significant part of the problem derives from expropriations of land in the aftermath of the War of Independence. Only 7 per cent of all land in Israel is privately owned, 4 per cent by Arabs and 3 per cent by Jews. The remaining 93 per cent is managed by the Israel Lands Administration (ILA) on behalf of the owners of the land: the Keren Kayemet Leyisrael, an organization funded by private Jewish donations (10 per cent of ILA-managed land); the Development Authority (10 per cent), and the State (80 per cent). The ILA has, over the years, leased or transferred significant land holdings for development of Jewish towns and settlements, while for the most part new Arab localities have not been established through similar arrangements, except for the eight Bedouin towns established in the southern Negev region. Another source of the gap in housing and development is the historic lack of approved town plans in the Arab sector, which made it exceedingly difficult to develop existing Arab localities to meet the needs of the Arab population, which has grown sixfold since 1948.

850. Over the past decade, the Government has taken measures designed to reduce the considerable differences in housing and development between the Jewish and Arab sectors. Among others, the ILA has allocated land for

residential projects, industrial areas and public buildings in several Arab localities; the Ministry of Interior has approved town plans for 29 Arab local authorities (out of 81), is close to approval of five other town plans, and has begun expedited development of town plans for 41 more localities; the land area of several localities has been enlarged for use in development, and plans for the enlargement of nearly 20 other Arab localities are currently under review; many Arab localities have been included in highest-priority development areas, which enables entrepreneurs to develop land and, in appropriate circumstances, to lease land at a fraction of its real cost; government ministries have increased their funding for development of residential and industrial infrastructure considerably over the last five years; the Interior Ministry has initiated a variety of programmes aimed at improving the effectiveness of Arab local authorities in spurring and managing development in areas under their jurisdiction, and actively encourages the formation of economic corporations which make it easier to receive public and private development funding (thus far 17 such corporations have been formed). In addition, a rule that allowed only army veterans to receive subsidized mortgages in development towns was abolished several years ago, on the basis of the Attorney-General's opinion that the rule was impermissibly discriminatory. Other government development activities in the Arab sector are discussed under article 27. Further progress remains to be made before the level of housing and land development can approach equality between the Jewish and Arab sectors.

851. **The Bedouin community**. The Bedouin population in Israel, particularly in the Negev Desert area, is perhaps the most disadvantaged single community in Israel in terms of per capita income, unemployment, and the level of infrastructure and services in their communities. There are approximately 100,000 Bedouins in the Negev, and roughly 38,000 in the Galilee. For most of Israel's history, the Bedouins have been engaged in a dispute with the Government over possession of lands and housing rights, which recently appears to be significantly closer to its resolution.

852. The Bedouins were originally nomadic tribes, whose economy was based on camel and sheep herding. They began settling in Eretz Yisrael in the fifth century A.D., and their numbers increased gradually throughout the centuries. Among themselves, land possession and ownership was determined by internal custom, which did not involve any written deeds of sale or ownership. Most of the lands used by Bedouins for herding and cultivation are of the legal category known as *muwat*, that is, land which is not privately owned or possessed. Under applicable Ottoman and British Mandatory Law, the possession of such *muwat* land is conditional upon receiving a permit; those who lacked permits were liable to prosecution for trespassing. (Ottoman Land Law of 1858, sect. 103; Land Ordinance (*Muwat*), 1921.) Alternatively, persons who cultivated such land prior to the enactment of the 1921 Mandatory Ordinance were entitled to receive formal rights to the land by submitting a request to the Land Registrar within two months of its publication. Although the Bedouins did not register the land that they inhabited, and had no written documents proving their rights, the British Mandatory authorities decided not to evacuate them.

853. Beginning in the 1950s, the Government pursued a policy of concentrating the Bedouins in the northern Negev, particularly in the *Sayig* area, which covers roughly 1.5 dunams, 40 per cent of which is used by the Bedouins for habitation, agriculture, and animal grazing; and of settling them in new government-planned towns, which had the unfortunate effect of uprooting them from their traditional way of life. Much of the hundreds of thousands of dunams over which Bedouins claimed ownership by force of possession and cultivation was transferred to State ownership. Seven towns were built in the Negev area, which today are the homes to roughly 50,000 persons, or half of the Negev Bedouin, who received compensation and very favourable terms for building or purchasing housing. The others live in unplanned, unlicensed homes and settlements, often without basic services such as water, electricity, roads, health care and educational facilities. In some cases, the Government provides these services without proper planning and legal arrangements. In other cases, the Ministry of Interior demolishes homes which have been built without permits. The Bedouins wish to be permitted to form rural settlements, where they can maintain their traditional way of life, and demand that the Government recognize existing structures and settlements, sanction the establishment of local authorities and town planning councils, and fund the development of infrastructure. The Government's position has been to find a workable solution within the framework of the law which will not force upon the Bedouins a housing solution inimical to their traditional way of life, but will also not involve a duty to create local government institutions and fund infrastructure in every place where members of the Bedouin community wish to live. According to a Ministry of Interior survey, it is estimated that there are over 100 illegal settlements, many consisting only of a small cluster of structures, spread over the Negev area alone, involving 108 tribes, over 9,000 housing units, and roughly 50,000 inhabitants, or slightly less than 1 per cent of the national population. Another 3,000 Bedouins live in illegal settlements in the Galilee region.

854. Over the past five years, the Government has taken important steps towards solving the land and housing problem in the Bedouin communities and towards bringing their quality of life to a level closer to that of the rest of the population, while preserving their way of life. Eight Bedouin settlements were recognized by the Government during 1994-1996, and consultations are currently taking place between the Government and Bedouin representative organizations regarding the recognition of a ninth settlement. Official recognition allows these settlements to receive government funding prior to the approval of town development plans. Consultations over other, smaller illegal settlements, mostly comprised of single families, are continuing, with the intention of integrating these settlements into larger, recognized settlements. Zoning and development plans for these newly-recognized settlements are being prepared, and the Government made a special allocation of NIS 5 million in 1996 for immediate infrastructure development in these settlements. In addition, plans developed by the Housing Ministry call for the construction of two or three new urban localities (each accommodating 600-800 families), two or three agricultural settlements (each containing up to 600 families), 10 agricultural farms (to be inhabited by 30 families each), and five to seven shepherding settlements for a total of

roughly 100 families. In 1996, a parliamentary commission which reviewed the condition of the Bedouin communities recommended that sufficient resources be allocated for the development of these new localities, and that arbitrators be appointed to expedite processing of Bedouin land claims.

855. Government investment in the Bedouin sector has increased markedly over the last several years. Overall funding by the Housing Ministry increased from NIS 50 million in 1989-1992 to NIS 138 million in 1993-1995. Several years ago, the Minister of Housing issued guidelines requiring that investments in infrastructure in the Bedouin communities be allocated on a level comparable to those granted to Jewish localities. The Israel Lands Administration invested NIS 128 million in infrastructure between 1991 and 1995, as well as NIS 50 million in compensation for Bedouin land claims. As part of the settlement of such land claims, the ILA also subsidizes 80 per cent of the cost of plots sold to Bedouins. In addition, the ILA has approved an NIS 280 million sewage-system installation project, has developed industry and crafts areas in three Bedouin localities, and, together with the Agriculture Ministry, has funded the construction of several commercial greenhouses.

856. The Ministry of Interior has approved outline development plans during the past five years for each of the seven existing Bedouin towns, which will facilitate the construction of housing, industrial areas, public institutions and public works. In addition, the Interior Ministry has significantly increased its regular allocations to Bedouin local and regional authorities, as part of its campaign to eliminate the disparity in allocations between Arab and Jewish municipal authorities generally.

857. Aside from its efforts at resolving the problems of land ownership and municipal organization in the Bedouin communities, the Government has pursued a range of activities aimed at improving the level of social services and the quality of life, including the following:

(a) The Ministry of Energy and Infrastructure has helped fund the connection of Bedouin localities to the electricity grid and has set up lighting at traffic intersections and in towns.

(b) In 1993, the Health Ministry submitted a plan to improve health services in the Bedouin communities, including the establishment of family clinics, health-education programmes, dental clinics, and drug prevention programmes. In 1994, four new family health clinics were built in Bedouin towns, and another two were completed in 1995-1996.

(c) The Ministry of Industry and Trade has worked to establish industry and crafts areas in all of the existing Bedouin towns, has invested NIS 11 million in new enterprises, and has established a business promotion centre in Rahat, the largest Bedouin town to counsel and train entrepreneurs.

(d) The Ministry of Education has increased school hours in Bedouin communities, doubled the number of comprehensive high schools, and has approved a budget for building 37 standard classrooms in Bedouin communities.

Nevertheless, the Bedouin communities still need a great deal of assistance in opening pre-school facilities, reducing truancy, hiring and training qualified teachers, busing students from remote localities, developing special education facilities, and improving the educational performance of their students.

(e) A course for qualified Bedouin nurses has been opened, with the intention that such nurses will serve as role models in the Bedouin community in the field of primary preventive health care.

858. In 1996, an interministerial committee was established to oversee and implement all government programmes related to the Bedouin communities. Within the National Infrastructure Ministry, a Directorate for the Advancement of Bedouins has also been set up, and has begun developing new plans for continued resolution of housing, land and development problems.

859. **Disabled persons**. Over the past decade, several new statutes have been enacted to ensure equality of treatment for persons with physical or other disabilities. The Special Education Law, 5748-1988, establishes the right of all children with special needs to appropriate special education. The Assistance of the Deaf Law, 5752-1992, requires that one quarter of originally-produced, non-live television broadcasting on each television channel must have subtitles, and that the Israel Broadcast Authority must broadcast at least one news programme per week with simultaneous sign-language translation. The Prohibition of Discrimination Against Blind Persons Accompanied by Guide Dogs Law, 5752-1992, forbids discrimination against blind persons in entering public places or using public transportation on account of the fact that they use a guide dog. The Disabled Persons Parking Law, 5754-1994, entitles disabled persons to park in no-parking zones, with certain restrictions. Other municipal or building and planning laws which require provision of access to the disabled are not stringently enforced, including at places such as health funds, welfare offices, local council offices, museums and office buildings. In response to one recent petition, the Supreme Court obligated a local authority to install adequate means of access in all public buildings. (H.C.J. 7081/93, *Botzer* v. *Maccabim-Reut Local Council* 50(1) P.D. 19.)

860. Following the findings of a public commission appointed by the Minister of Justice and the Minister of Labour and Social Affairs, a bill currently is being considered by the Knesset which would create comprehensive legal arrangements for protecting the rights and needs of disabled persons. The first part of the law will be enacted shortly following the submission of this report.

Equality in other contexts

861. The safeguarding of equality is discussed in specific contexts under many of the other articles in this report, particularly in articles 3 (Equal rights of men and women), 12 (Freedom of movement), 18 (Freedom of religion and conscience), 19 (Freedom of opinion and expression), 23 (Protection of the family), 24 (Protection of children), 25 (Access to the political system), and 27 (Rights of minorities to culture, religion and language).

Article 27 - Rights of minorities to culture, religion and language

862. **Introduction: Defining minority groups**. Israel was founded as a homeland for the Jewish people in which all citizens, regardless of religion, race or ethnic background would enjoy equal social and political rights. Its Jewish population is composed largely of immigrants and the descendants of immigrants from countries spanning virtually the entire globe. Many Jews in Israel maintain cultural, linguistic and traditional ties with others from the same geographical origin through a plethora of voluntary organizations, newspapers and electronic media programming in the language of their country of origin, and other, informal contexts. Members of these subcommunities, moreover, participate in social and political action groups to advance their interests, and in two cases have created political parties with significant representation in the Knesset (the Shas Torah Guardians party, composed of orthodox Jews of Oriental (*Sephardi*) ethnic origin, and the Israel Ba-aliya Party, founded largely by immigrants from the former Soviet Union). Although the process of integration into Israeli society often inevitably involves a dissipation of traditional cultural practices in these subcommunities, their members are in no way limited in their capacity to engage in cultural or linguistic activity within their communities; in many instances they receive government support for such activities, as in radio and television programming in nine different languages on government-owned stations, direct funding to voluntary organizations for cultural activities, and various government-administered programmes in education and culture. At the same time, some of the immigrant communities have confronted considerable difficulties in areas not directly related to the rights enumerated under this article, particularly in the initial stages of their integration into the larger society. Over the first decades of Israel's history, many Jews who immigrated from Arab countries (known as *Sephardim* or Oriental Jews) suffered from a relative lack of economic opportunity, lower educational attainments, and a lower level of participation in the conduct of public affairs in comparison with Jews of European (*Ashkenazi*) extraction. These gaps, as well as the social tensions attending them, have by and large narrowed considerably over the last two decades. More recently, the mass immigration of Jews from the Soviet Union since 1989, and particularly of the bulk of Ethiopian Jewry in 1990, have given rise to special problems in meeting the needs of these immigrant communities in such areas as education, vocational training, housing, and personal status. To respond to many of these needs, and to ease what for many is an abrupt cultural transition, the Government has instituted an array of policies and programmes which, to a greater or lesser extent, treat these subcommunities as distinct groups.

863. Despite the fact that different Jewish subcommunities are often viewed, both by the public and by official authorities, as distinct groups within Israeli society, they are not deemed minorities for the purposes of reporting under this article. Rather, only the non-Jewish communities - Muslims, Christians, Druze, Circassians, and Baha'i - will be considered as minorities, properly so-called, in the discussion below.

864. The definition of minorities in Israel straddles certain ethnic and racial categories. Most Muslims and Christians in Israel are of Arab ethnicity. The Circassians are non-Arab Sunni Muslims originally from the area of the Caucasus. Within the Muslim community there are several sub-groups, such as the Bedouins and the Ahmadis, a small sect living primarily in the village of Kababir in the Carmel mountain range. The Christian community is comprised of 10 different recognized denominations, as discussed under article 18, and several other small subcommunities which function independently of any official sanction. The Baha'i residents of Israel come from a variety of ethnic backgrounds.

865. **Minority populations**. At the end of 1996, Israel's total population was 5,759,400, of whom 4,637,400 (80.5 per cent) were Jews, 842,500 (14.6 per cent) were Muslims, 183,200 (3.2 per cent) were Christians, 96,300 (1.7 per cent) were Druze, approximately 5,500 were Circassians, concentrated in the towns of Kafr Kama and Rehania, and between 600-700 Baha'i, who live in the Haifa area and in Acre, close to the two sites holy to the Baha'i in Israel. The following table shows the growth of the major population groups (Jewish, Muslim, Christian and Druze) from the establishment of the State until 1995.

866. Several larger cities, such as Jerusalem, Haifa, Tel Aviv-Jaffa, Acre, Lod and Ramla have mixed Jewish and non-Jewish populations. Apart from these, however, the members of non-Jewish minorities generally reside separately from the Jewish population in smaller cities, towns and villages. Most of the Druze population lives in 13 towns or villages which are either entirely or nearly all Druze, with the remainder spread out among other Arab or Circassian towns.

Participation in the conduct of public affairs

867. **The Knesset and political parties**. Members of minorities have been elected to every Knesset since Israel's founding. Until the 1980s, nearly all Arab Knesset members were affiliated with the Israel Communist Party (*Maki*) and its offshoot, the New Communist Party (*Rakah*). More recently, a number of Arab or mixed Arab-Jewish political parties, such as the Democratic List for Peace and Equality (which subsumed the New Communist Party together with the Sephardi "Black Panther" activists and other Jewish and Arab groups), the Arab Democratic Party and others, have run in national elections and have received up to five Knesset mandates. In addition, Arabs and Druze have held seats in the Knesset factions of several other parties. Of the nine minority members in the current Knesset, two are Christian, one Druze, and six Muslim. No Arab has yet served as a minister in any of Israel's Governments. In the Government headed by the late Yitzhak Rabin and Shimon Peres between 1992 and 1996, two Arabs and one Druze served as deputy ministers. The Chairman of the Knesset Interior Committee is Druze. In the past, there have been several Arab Deputy Speakers of the Knesset.

Table 19. The population, by religion

(Thousands)

Average population						Population at end of year						
Arabs & others						Arabs & others						
Druze	Chris-tians	Muslims	Total	Jews	Grand total	Druze	Chris-tians	Muslims	Total	Jews	Grand total	
									156.0	716.7	872.7	(1)8 XI 1948
..	..	..	..	671.9	..	..	..	..	..	738.7	..	1948
			158.0	901.0	1,059.0	14.5	34.0	111.5	160.0	1,013.9	1103.9	1949
14.8	35.0	113.8	163.8	1,100.0	1,263.8	15.0	36.0	116.1	167.1	1,203.0	1300.1	1950
15.3	37.5	117.5	170.3	1,324.3	1,494.3	15.5	39.0	118.9	173.4	1,404.4	1,577.8	1951
15.8	39.7	120.8	176.4	1,429.8	1,606.2	16.1	40.4	122.8	179.3	1,450.2	1,629.5	1952
16.5	40.9	125.2	182.6	1,467.7	1,650.3	16.8	41.4	127.5	185.8	1,483.6	1,669.4	1953
17.4	41.7	129.7	188.8	1,500.7	1,689.5	18.0	42.0	131.8	191.8	1,526.0	1,717.8	1954
18.5	42.7	134.1	195.1	1,555.3	1,750.4	19.0	43.3	136.2	198.6	1,590.5	1,789.1	1955
19.4	43.5	138.9	202.0	1,626.4	1,828.4	19.8	43.7	141.3	204.9	1,667.5	1,872.4	1956
20.2	44.8	144.1	209.2	1,721.2	1,930.4	20.5	45.8	146.8	213.2	1,762.8	1,976.0	1957
21.0	46.6	149.8	217.4	1,782.7	2,000.1	21.4	47.3	152.8	221.5	1,810.2	2,031.7	1958
21.9	47.8	156.0	225.9	1,836.2	2,062.1	22.3	48.3	159.2	229.9	1,858.8	2,088.7	1959
22.8	49.0	162.8	234.4	1,882.6	2,117.0	23.3	49.6	166.3	239.1	1,911.3	2,150.4	1960
25.8	50.7	171.2	247.9	1,942.0	2,189.9	26.3	51.3	174.9	252.5	1,981.7	2,234.2	(2)1961
26.8	51.9	178.9	257.7	2,030.5	2,288.2	27.3	52.6	183.0	262.9	2,068.9	2,331.8	1962
27.9	53.2	187.7	268.4	2,111.3	2,379.7	28.5	53.9	192.2	274.5	2,155.6	2,430.1	1963
28.5	54.6	197.3	280.4	2,197.1	2,477.5	28.6	55.5	202.3	286.4	2,239.2	2,525.6	1964
29.2	56.3	207.3	292.8	2,269.8	2,562.6	29.8	57.1	212.4	299.3	2,299.1	2,598.4	1965
30.4	57.8	217.7	306.0	2,323.2	2,629.2	31.0	58.5	223.0	312.5	2,344.9	2,657.4	1966
31.5	64.8	256.2	352.7	2,362.6	2,715.2	32.1	71.0	289.6	392.7	2,383.6	2,776.3	1967
32.6	71.8	294.6	398.9	2,407.6	2,806.5	33.3	72.2	300.8	406.3	2,434.8	2,841.1	1968
33.9	72.9	307.8	414.6	2,469.6	2,884.2	34.6	73.5	314.5	422.7	2,506.8	2,929.5	1969
35.2	74.5	321.2	431.0	2,543.1	2,974.0	35.9	75.5	328.6	440.1	2,582.0	3,022.1	1970
36.6	76.4	336.1	449.1	2,620.1	3,069.3	37.3	77.3	344.0	458.7	2,662.0	3,120.7	1971
37.8	77.8	352.3	468.0	2,704.6	3,172.6	37.8	73.8	360.6	472.3	2,752.7	3,225.0	(2)1972
38.5	75.2	368.7	482.4	2,795.6	3,278.1	39.3	76.7	377.2	493.2	2,845.0	3,338.2	1973
40.0	77.7	386.1	503.9	2,873.6	3,377.4	40.8	78.7	395.2	514.7	2,906.9	3,421.6	1974
41.5	79.4	403.1	524.0	2,931.2	3,455.3	42.2	80.1	411.4	533.8	2,959.4	3,493.2	1975
43.1	81.2	420.6	544.7	2,988.3	3,533.0	43.9	82.0	429.0	555.0	3,020.4	3,575.4	1976
44.8	83.0	438.1	565.9	3,047.2	3,613.0	45.6	83.8	446.5	575.9	3,077.3	3,653.2	1977
46.4	84.6	454.7	585.7	3,106.9	3,692.6	47.3	85.5	463.5	596.4	3,141.2	3,737.6	1978
48.1	86.6	472.2	606.9	3,179.5	3,786.4	49.0	87.6	481.2	617.8	3,218.4	3,836.2	1979
49.9	88.8	489.7	628.3	3,249.4	3,877.7	50.7	89.9	498.3	638.0	3,282.7	3,921.7	1980
51.5	90.7	505.9	648.3	3,300.0	3,948.1	52.3	91.5	513.7	657.4	3,320.3	3,977.7	1981
64.6	92.8	522.6	680.0	3,346.6	4,026.7	65.6	94.0	530.8	690.4	3,373.2	4,063.6	1982
67.0	94.8	533.3	695.1	3,381.0	4,076.2	68.0	95.9	542.2	706.1	3,412.5	4,118.6	(2)1983
69.0	97.0	551.0	717.1	3,442.1	4,159.1	70.0	98.2	559.7	727.9	3,471.7	4,199.7	1984
71.0	98.8	568.7	738.5	3,539.3	4,233.0	72.0	99.4	577.6	749.0	3,517.2	4,266.2	1985
73.0	100.2	586.3	759.5	3,539.3	4,298.8	74.0	100.9	595.0	769.9	3,561.4	4,331.3	1986
75.0	102.0	604.7	781.7	3,587.2	4,368.9	76.1	103.0	614.5	793.6	3,612.9	4,406.5	1987
77.1	104.0	624.5	805.7	3,636.0	4,441.7	78.1	105.0	634.6	817.8	3,659.0	4,476.8	1988
79.2	106.0	644.9	830.1	3,688.1	4,518.2	80.3	107.0	655.2	842.5	3,717.1	4,559.6	1989
81.4	109.8	666.2	857.5	3,802.7	4,660.2	82.6	114.7	677.7	875.1	3,946.7	4,821.7	1990
83.7	121.6	689.5	894.8	4,054.3	4,949.1	84.8	128.0	701.4	914.3	4,144.6	5,058.8	1991
85.9	134.6	713.2	933.7	4,189.8	5,123.5	87.1	140.9	725.4	953.4	4,242.5	5,195.9	1992
88.1	146.3	738.4	972.8	4,288.7	5,261.4	89.3	151.8	751.4	992.5	4,335.2	5,327.6	1993
90.4	154.5	766.4	1,011.3	4,388.0	5,399.3	91.7	157.3	781.5	1,030.4	4,441.1	5,471.5	1994
92.8	159.9	797.2	1,049.8	4,495.1	5,544.9	94.0	162.6	813.0	1,069.5	4,549.5	5,619.0	(3)1995
95.1	172.8	827.7	1,095.6	4,593.2	5,688.9	96.3	183.2	842.5	1,122.0	4,637.4	5,759.4	(3)1996

(1) Date of population registration.

(2) Census year.

(3) Based on 1983 Census.

868. **The judiciary**. As of October 1997, out of a total of 410 judges serving in the civil court system, there were seven Christian judges (one in the district court, five in the magistrates courts, and one in a regional labour court); eight Muslim judges (three in the district court, four in the magistrates courts and one traffic court judge); and four Druze judges, all in the magistrates courts. Thus far, the highest judicial rank achieved by a member of a minority has been the deputy president of a district court. Present and past members of the Judicial Selection Committee, including several justice ministers, Supreme Court judges and the courts director, have expressed great interest in appointing more members of minorities to the bench, including to the Supreme Court, which has never had an Arab justice, and they continue to take informal steps to encourage applications by qualified minority members of the bar. All judges in the Muslim, Christian and Druze religious courts are members of the religion in question, and they apply the substantive law of that religion to matters of personal status over which they have jurisdiction, as discussed under article 18.

Participation in the civil service

869. In the late 1980s a government committee (the Kobersky Committee) undertook a comprehensive review of the civil service and of other bodies supported by State funds. The Kobersky Report, submitted in 1989 and adopted by the Government in 1990, called for strenuous efforts to include more members of minorities in the civil service. To begin to redress the severe under-representation of minorities in government ministries, the Government adopted a three-year plan to create 160 new mid-level positions in the ministries and actively to seek out and hire properly-qualified Arabs (Muslims and Christians) and Druze to fill those positions. Under the terms of this affirmative action plan, three quarters of the positions were reserved for Arabs and one quarter for Druze. The project was ultimately completed successfully in June 1997. Actually, over that period the number of minority employees in government ministries grew by almost 1,000, from 1,369 to 2,357, out of a total of roughly 56,000 total employees. It has been observed that the Government affirmative action programme seemed to have had the effect of breaking settled assumptions both on the part of the ministries and among the Arab population itself. In addition, the Civil Service Commission decided during this period to publish all job tenders for government ministry positions in Arabic newspapers, not just those positions specifically relating to the Arab sector, which may also have had some role in the increase of minority job applicants over this period. The following table summarizes the distribution of these minority employees according to religious/ethnic affiliation and level of education.

Table 20. Arab and Druze ministry employees, according to religion, ethnicity and educational level
(as of June 1997) (not including school employees)

Level of education	Religion and ethnicity						
	Muslim Arab	Muslim non-Arab	Christian Arab	Christian non-Arab	Druze	Other	Total
Unknown	27	1	2		2	2	34
Elementary	241		10	5	1	8	265
Secondary	385	7	135	52	97	56	732
Post-secondary	397	7	143	21	65	35	668
Partial university study	24	2	6	5	10	1	48
Bachelor's degree	139	14	52	13	32	8	258
Master's degree	30	17	6	12	8	8	81
Doctorate	111	7	56	17	29	49	269
Quasi-academic	2						
Total	1 356	55	410	125	244	167	2 357

870. Of these 2,357 minority employees, 925 have managerial positions, 219 are doctors, and 768 are nurses, 33 are social workers, 27 are biochemists or microbiologists, 22 are certified x-ray technicians, and 19 are engineers. The ministries which employ the highest number of minorities are the Health Ministry (1,370), the Ministry of Religious Affairs (316, including Muslim religious judges (*qadis*)), the Finance Ministry (219), the Labour and Social Affairs Ministry (119) and the Ministry of Education, Culture and Sport (101). These figures do not include over 15,000 teachers, principals and educational inspectors employed by the Ministry of Education in the Arab educational system.

871. Recently, the Civil Service Commission formed a new commission to weigh the continuation of the affirmative action project. Further progress remains to be made, not only in the overall representation of minorities in government ministries, but also in their appointment to senior positions. Until now, no Arab has served as a Director-General of a ministry, and one has served as a Deputy Director-General (in the Ministry of Education, Culture and Sport). The current Ambassador to Finland is Arab, and the Consul-General in Bombay is Druze. During the previous government, there was one Consul-General in the United States. Although members of minorities have in recent years been appointed as directors of government corporations and have been hired to professional positions in such corporations, minorities are still vastly under-represented in this area as well.

872. Among the 20,056 regular employees of the Israel Police (including the Border Police) as of October 1997, 1,963 (9.8 per cent) are members of minorities. More than half of these minority employees are Druze, roughly one quarter are Muslim (including Bedouins), 15 per cent Christian, and the remainder Circassians, except for one Samaritan. The distribution of rank held by minority employees is summarized below.

Israel Police Rank	# Minority Officers
Senior Commander (second highest rank, after Commissioner)	1
Commander	4
Chief Superintendent	18
Superintendent	73
Chief Inspector	105
Inspector	55
Sub-Inspector	11
Senior NCO (Non-Commissioned Officer)	11
Senior Staff Sergeant Major	69
Adv. Staff Sergeant Major	357
Staff Sergeant Major	13
Sergeant Major	660
Deputy Sergeant Major	317
Sergeant	189
Corporal	46
Lance Corporal	26
Constable	8
Total:	**1 963**

In addition, as of October 1997, 140 members of minorities were serving in the Police or Border Police in fulfilment of military service obligations, including 26 Muslims and Bedouins, 17 Christians, 17 Druze, one Circassian and one Samaritan.

873. In the Prisons Service, minorities are relatively well-represented, including among the ranks of officers, in relation to their representation in the general population: 23.5 per cent of all personnel (834 out of 3,542) are members of minorities, including 13.6 per cent of those holding officer rank. As of late 1997, there were two minority prison officials holding the rank of Commander, one Chief Superintendent, 37 Superintendents (10.5 per cent of all personnel at that rank), 51 Chief Inspectors (16.3 per cent), 30 Inspectors (19.1 per cent), and 14 Sub-Inspectors (46.7 per cent). Among minority employees of the Prisons Service, the vast majority are Druze (791 out of 834); of the remainder, there are 25 Bedouins, 11 Christians, five Muslims and three Circassians.

Local government

874. In Israel, local and regional authorities are largely responsible for providing public services in many areas of civic life related to the rights specifically enumerated in this article - particularly education and culture - as well as other services which indirectly relate to the advancement of

minorities, such as building and planning and economic development. The participation of minorities, then, at the local government level, is central to the enjoyment of rights under this article. In Israel, the membership in local governing councils and the administrative personnel in local authorities generally reflect the demographic make-up of the local population. Due to the demographic separation between different population groups outside of several larger cities as described above, there are 82 local authorities in which the members of the executive organs and the employees are exclusively or almost exclusively members of minorities, out of a total of 241. Of these local authorities, 61 of the non-Jewish and 72 of the Jewish localities have formal local councils; 15 of the local authorities are in Druze localities, two are in Circassian towns, and the remainder are defined as Arab councils, without distinguishing between those in which the population is primarily Muslim or Christian, respectively. As of 1995, there were roughly 650 Arab members of local councils and roughly 7,500 Arab employees in local authorities or municipalities.

875. In the larger cities with mixed population, the level of representation of minorities on municipal councils and among local government employees tends to be somewhat lower than their representation in the local population. In Jerusalem, in which roughly 30 per cent of the population is Arabic, those Arabs who became residents of Israel following the June 1967 war choose, by and large, not to vote or to put forth candidates in municipal elections; they are, however, fairly well-represented among the ranks of municipal employees. It has been the policy of recent governments, as part of a general effort to achieve equal civic and social rights of minorities generally, to encourage the hiring of more members of minorities at the local government level. The activities taken at the local government level to help ensure the realization of rights under this article are discussed below.

Language

876. Arabic, like Hebrew, is an official language in Israel. It is the primary, virtually exclusive language of social intercourse within the Arab and Druze communities, and, of course, there are no official restrictions on its use in all facets of communal life. Arabic is the language used in the State-run educational system in Arab localities and in Arab communities within the larger, mixed cities, as well as in independent religious schools. Virtually all of the teachers, and all but one of the principals in Arab schools are members of the community. The curriculum, which is administered by each local authority with oversight by the Department for Arab Education at the Ministry of Education, Culture and Sport, places an emphasis on Arabic language, culture and history, and includes required hours of instruction in religious (Christian, Muslim or Druze) topics.

877. There are over 40 privately-published newspapers and magazines in Arabic, including two dailies (*al-Ittihad*, affiliated with the Communist Party, and *al Kuds*, published in Jerusalem), one bi-weekly (*al-Sinara*, the largest-circulation Arabic newspaper in Israel, published in Nazareth), several weeklies (including *Kol il-Arab*, *Panorama*, *Saut-al-Hak wal-Huriyah* (published by the Islamic Movement), and *Fasl-al-Mekal*), several Arabic-language periodicals on culture and current affairs (some of which receive partial government funding), and six Arabic-language book publishers.

One licensed local-radio station, as well as a substantial number of currently unlicensed stations are owned and operated by Arab concerns, providing a full range of radio broadcasting to the Arabic-speaking minorities in addition to Arabic programming broadcasted on government-owned radio. The government-owned first television channel currently broadcasts roughly 19 hours of Arabic-language programming each week. Radio and television broadcasts from many Arabic countries, such as Jordan, Lebanon, Egypt and Morocco, are freely available through ordinary radio and television reception and cable television operators.

878. In the larger sphere of Israeli civic life, the right of Arabic-speaking minorities to use their language is generally recognized and observed. Official forms used by government ministries are generally produced in both Hebrew and Arabic (as well as English, Russian and Amharic in certain instances). The government-owned television and radio stations include daily Arabic-language broadcasts. The franchisees of the second television channel are required by law to provide a minimum level of Arabic-language programming as well. In January 1994, the Civil Service Commission decided, as mentioned above, to publish all civil service job tenders in Arabic-language newspapers, which had not previously been the case. Similarly, in December 1995, the Minister of Finance promulgated regulations requiring all notices of tenders administrated by that Ministry to be published in a daily or weekly Arabic newspaper of wide circulation.

879. One area in which the use of Arabic in the public realm has not been fully realized is in road signs, which sometimes appear only in Hebrew and English. Two recent Supreme Court decisions have buttressed the status of the Arabic language in this regard. In December 1993, the Court issued a consent decree requiring the city of Haifa to include Arabic inscriptions in all municipal signs within two years. In 1995, the Court invalidated a municipal law requiring all notices posted in the city of Nazareth Illit to be entirely or mostly in the Hebrew language. In this latter decision, the Court gave constitutional status to the right to use the Arabic language, as part of the broader right to freedom of expression:

> "The freedom of expression includes the freedom to express oneself in the language of one's choosing. Freedom of expression cannot be guaranteed without ensuring freedom of language. Language is central to expression."

(C.A. 105/92, *Re'em Engineers and Contractors Ltd.* v. *Nazareth Illit Municipality*, 47(5) P.D. 189) In spite of these judicial developments, a fair portion of traffic signs, particularly on inter-urban roads and highways, do not yet include Arabic inscriptions. Recently, the Government, at the instigation of NGOs, has committed to post Arabic inscriptions on road signs throughout the country over a period of three years.

880. **Religion**. As discussed in detail under article 18, the religious minorities in Israel enjoy full freedom of religious worship, including the statutory right to observe holidays and weekly rest days according to the dictates of their faith. The integrity of holy places of all major religions is protected by statute. Funding for non-Jewish religious services and institutions has increased substantially over the last several years.

Governmental measures to foster cultural life of minorities

881. **Arab (Muslim and Christian) communities**. Until 1988, the Government did not pursue activities in any structured manner to promote cultural and artistic life in the Arab sector. In that year, a Department for Arabic Culture was formed within the Ministry of Education and Culture, with offices in Jerusalem, Tel Aviv and Nazareth; since 1992 the Department has been headed by an Arab professional, Mr. Muafak Houri. The formulation of programmes and policies by the Department is guided by a public committee appointed by the Minister (now the Minister of Education, Culture and Sport), which consists primarily of prominent cultural figures in the Arab community. The Department has initiated or helped administer a broad range of cultural programmes for the Arab communities, including the following:

(a) **Community centres**. In conjunction with other Government ministries and local authorities, the Department has helped establish 28 new community centers in Arab localities, which serve as a local home for cultural life and extrascholastic programmes.

(b) **Theatre**. The Department has aided in the establishment or funding of six different Arab theatre companies - the Haifa Arabic Theatre, the Beit Hagefen Arabic Theatre, the al-Gorbal Theatre in Shfar'am, the as-Sakfa Children's Theatre in Kafr Kama, the Azhbana Theatre, and a theatre in Kfar Tamra - as well as helping sponsor theatre programmes in the schools.

(c) **Music**. The Department assists in the funding of six Arabic orchestras playing traditional music, in Haifa, Nazareth, Tarshiha, al-Gorbal, Kfar Yasif, and 'Ablin, as well as in 16 different after-school music programmes, each of which are attended by 70-150 students.

(d) **Plastic arts**. Four art galleries displaying the works of Arab and Jewish artists, in Nazareth, Umm el-Fahm, Kfar Yasif, and Daliat al-Carmel, receive support from the Ministry of Education, Culture and Sport.

(e) **Dance**. In conjunction with local authorities and local workers' committees, the Ministry provides partial funding for 64 different traditional Arab dance (*debka*) troupes, as well as for annual trips abroad for 30 to 35 such troupes to participate in international festivals.

(f) **Libraries and literature**. Fifty-one public and school libraries in Arab localities are partially funded by the Education Ministry, enabling the purchase of tens of thousands of books annually. For the last eight years, the Ministry also gives awards to promising writers which allow them to devote their full energies to writing for one year. Five such prizes are awarded annually. In addition, until 1996 the Ministry assisted in funding the publishing costs for books in the Arabic language, either directly or by buying a predetermined number of copies of the book upon publication.

(g) **Festivals**. The Ministry provides substantial funding for an annual Arabic Culture and Literature Week in 35 to 40 different localities; Arabic folk music festivals in conjunction with the Kaukab and Shfar'am local

authorities; a folkdance festival in Majdal Kurum; the annual Nazareth Festival for Theatre Arts; and the participation of Arabic theatre productions at the annual Acre Theater Festival.

882. **Druze and Circassian communities**. In 1993, a Department for Culture in the Druze and Circassian sectors was established at the Ministry of Education, Culture and Sport upon the recommendation of a public committee which examined education and culture in the Druze community. The new Department was also given responsibility for mixed communities in which Druze reside. The policy of the Department, as formulated by a public council composed of cultural professionals from the Druze and Circassian communities, has been to deepen and rekindle the engagement with the Druze and Circassian cultural heritage, on the one hand, and on the other hand to integrate Druze culture within the larger Israeli culture through association with nationwide cultural programmes. Since 1994, the Department has used its budget to help fund a wide range of cultural and artistic programmes, including the following:

(a) Local music, theatre and folklore festivals, as well as participation in international cultural festivals (15 local authority recipients total).

(b) The establishment or preservation of four cultural museums.

(c) Three musical centres and a Druze choir company, eight different theatre troupes, mounting of exhibitions by plastic artists, cash prizes to artists and art students, art camps for youth funding of folklore and plastic arts workshops, and the production of movies and television programmes related to Druze culture.

(d) Publication costs and other support for nearly 60 different writers or book projects, and funding for public libraries in conjunction with 13 different local authorities.

(e) The Druze community archive at the University of Haifa, the Institute for the Study of the Circassian Community, and other cultural programmes or centres.

Development of infrastructure and economic opportunity

883. Over the past several years, the Government, recognizing the need to close a substantial gap in funding given to the Jewish and non-Jewish sectors, respectively, has dramatically increased its budget and activities aimed at developing infrastructure and economic opportunities in Arab, Druze and Circassian localities. The implementation of policy and budget allocations to these communities is supervised by two recently-formed interministerial committees, one for the Druze and Circassian communities and the other for the rest of the Arab communities, both of which are coordinated through the Prime Minister's Office.

884. Between 1992 and 1997, governmental funding for development to the Arab sector increased from roughly NIS 230.7 million to NIS 604 million (approved 1997 budget). In addition, the direct allocations to Arab local authorities to cover operating expenses, hiring additional personnel and the cost of

municipal works increased from NIS 230.7 million in 1992 to NIS 604 million in 1997, bringing it to parity with the average of such allocations to Jewish local authorities. It may be noted that despite severe budget cuts in the budgets of all ministries in fiscal 1997, no cutbacks whatsoever were made in any allocations to the Arab sector; in certain cases, such as in allocations to local authorities for operating expenses and development, the budgets earmarked for use in the Arab sector increased substantially while parallel funding in the Jewish sector was decreased.

885. Among the broad spectrum of government measures related to development in the Arab sector during this period, the following may be noted:

(a) The Government has included many Arab localities in the geographical areas designated as "Development Area A", which receive highest priority in government development programmes. The inclusion in Development Area "A" confers the highest level of funding, incentives and entitlements to commercial ventures and private citizens alike. Among other things, entrepreneurs in approved ventures receive the highest level of government stipends and various tax incentives; land allocated by the Government for industrial or residential projects is sold to entrepreneurs at far less than its real value (69 per cent discount on land for residential projects, 89 per cent discount for industrial projects); commercial enterprises located in the high-priority development area receive preferential treatment in government tenders; substantial government support is given for building infrastructure in commercial and residential development projects; individuals are exempted from various payments, such as for government-sponsored nursery schools; and other entitlements.

(b) The Ministry of Interior has enlarged the land area of several Arab localities for use in development by adjusting borders to include land previously under the jurisdiction of other local authorities or land lacking municipal status. Plans for the expansion of roughly 20 other localities are currently being reviewed.

(c) Since January 1996, eight new Arab local authorities have been established, and two other previously-unrecognized villages have been accorded official recognition of their status within larger regional authorities. The acquisition of independent municipal status is a crucial spur for economic development, as it enables direct assessment of municipal taxes and the full range of government funding for municipal services and development projects.

(d) The Ministry of Interior also carries out several programmes aimed at improving the ability of Arab and Druze local authorities to exploit opportunities for economic development. The Ministry actively supports and encourages the formation of economic corporations and associations partially owned or managed by local authorities, which make it much easier to receive government and private funding for development projects, and which serve as a vehicle for planning and implementing such projects. Since 1989, 17 economic corporations have been created in Arab localities, and five more are in the process of formation. In addition, the Ministry has overseen the formation of 13 different municipal associations which provide an efficient vehicle for funding and carrying out a range of culture and social programmes. Finally, the Ministry provides organizational counselling to local authorities, courses

in organizational management to local officials, and training of Arab and Druze organizational counsellors, to help improve the efficiency of the municipal administration in matters that affect the capacity of local authorities to plan, fund and execute economic development projects.

(e) Allocations for developing residential infrastructure in Arab localities increased fourfold between 1992 and 1996.

(f) The Government has directly funded extensive building of access roads, water works and sewage projects, and connection of towns and villages to the national electricity grid.

(g) Since 1991, municipal "outline" development plans have been approved for 29 of the 81 Arab local authorities, and outline plans for five others are in advanced stages of the preparation and approval process. Recently the Government has initiated an ambitious programme to expedite preparation and passage of municipal outline development plans for an additional 41 existing Arab localities, and for eight other areas inhabited by Bedouins in the Galilee to which the Government decided to accord full-fledged municipal status. These outline plans allow for fullscale development of industrial areas, residential neighbourhoods, public structures and municipal works. Over the years, the lack of approved outline plans in many Arab localities has been a major obstacle to economic development. Typically, the process of approving such long-term municipal outline plans takes many years. The Government has recently decided to commit substantial funding and staff to shorten the planning process drastically. Implementation of the planning process is being coordinated by an interministerial task force, and Arab professionals are to make up a significant proportion of the planning staff.

(h) Various government ministries have been involved in setting up industrial zones in 30 Arab localities, including in the allocation of State-owned land, planning, building of infrastructure, and marketing the projects through State-sponsored tenders.

(i) The Small Businesses Authority has set up five regional offices to assist and advise entrepreneurs in the Arab sector in the various stages of setting up private ventures. Informative materials on government assistance programmes have been distributed in Arab localities and published in the Arabic-language press.

(j) Direct government grants have been given to several agricultural enterprises in the Arab sector, including the expansion of greenhouses, export crops, farm roads, water systems and water for irrigation.

(k) The Ministry of Environment has created eight regional environmental protection units in the Arab sector, serving over 50 Arabic municipalities and local authorities, as well as several regional authorities with large Arab populations. These units handle such matters as solid and hazardous waste disposal, environmental education programmes in the Arab schools, creation of landfills, waste recycling, and agroecology. The personnel at these field units come from the local population. Since 1993, the Ministry's budget for waste recovery in the Arab sector has been increased fourfold, and currently comprises 28 per cent of the total national waste

recovery budget. Over the same period, as part of a nationwide effort to control and supervise waste disposal, roughly 100 illegal dumps near Arab localities have been closed, and two central landfills and a sorting plant have been created in the northern Galilee region, serving Arab and Jewish localities alike.

(l) The Ministry of Tourism has been involved in the development of tourism projects in the Arab sector, such as in Nazareth, Acre and Jisr es-Zarqa, as well as in consulting and training courses for Arab tourism professionals.

(m) Several hundred classrooms were built each year under the auspices of the Ministry of Education, which used over 30 per cent of its development budget for projects in the Arab sector (which, in turn, comprises 19 per cent of the national population).

(n) A special educational programme for gifted Arab children was initiated in 1993; in 1996, 1,655 schoolchildren participated in the programme.

(o) Many Arab municipalities have been included in the first stage of a national longer-school day programme.

886. **Other measures**. In 1994, the Ministry of Health earmarked a budget of NIS 33.6 million for the establishment of family health centres in underserved Arab villages and townships over a four-year period. Under this programme, the Ministry provided partial funding for the building of 20 new family health centres in 1994, and for 30 such centres in 1995.

887. The Government has concluded a special agreement to eliminate disparities in funding and development for the Druze and Circassian communities over a five-year period, involving a total allocation of NIS 1,070 million, which will be dedicated among other things to the building of cultural centres, libraries, mother-child care clinics, religious court buildings, roads, water and sewage systems, and the development of industry and tourism.

The Bedouin community and culture

888. Although the Bedouin community in Israel shares a common religious and ethnic heritage with the other Muslim Arabs in Israel, in certain significant senses they are culturally distinct. While about half of the roughly 100,000 Bedouins who live in the southern Negev Desert region, and a majority of those in the northern Galilee region, reside in several towns set up by the State over the years, the remainder are scattered among small, unrecognized settlements and maintain, to a greater or lesser degree, a traditional, semi-nomadic way of life. While the Bedouins maintain traditional cultural practices, their encounter with modern Israeli society has placed certain characteristic strains on the social and family culture. Other problems facing the Bedouins are discussed under article 26; issues related directly to the rights enumerated under this article are discussed below.

889. Bedouin social culture is patriarchal and highly traditional. Bedouin women generally assume all domestic responsibilities, from upkeep of the family tent to education of children and care of the elderly or infirm. As a result of the State-sponsored transition of a large segment of the Bedouin population from a semi-nomadic way of life to permanent residence in towns, the context for the traditional roles of women has been altered, and, in some areas such as education, largely removed. The abandonment of their traditional way of life has left a vacuum in the lives of Bedouin women who are often unequipped or unable to enter the labour market or to pursue a formal education. On the whole, moreover, Bedouin women are not allowed to leave their village for educational or employment purposes. Although Bedouin girls constitute at least 50 per cent of the student body of recognized Bedouin schools, very seldom do girls go on to higher education, as many parents expect their daughters to return to their traditional roles in the household, and, if they are allowed to work, to hand over their wages to their parents. At the same time, Bedouin men are more apt to leave their villages to work or study, thus becoming exposed to a modern, western form of social life, and often returning home with more "modern" expectations regarding the proper role of women in the home and beyond.

890. One result of the changes in social practices arising from urbanization and the encounter with a modern society has been a deterioration in the status and prestige of Bedouin women in the community, who have been deprived to a certain extent of their traditional role, while at the same time being less able to meet the more modern conceptions of their male counterparts. Many Bedouin women remain unmarried at relatively advanced ages (late 20's to early 30's), and are perceived as economic burdens on their families. As a result, quite a few of these older unmarried Bedouin women are married off as second or third wives, often in forced marriages, leading to a rise in polygamy. Recent research of marriage ages in Rahat, the largest Bedouin town, showed that the average age of legal wives in monogamous marriages was 18.3 years old, the average age of first wives in polygamous marriages was 20.5 years old, while the average age of subsequent wives in a polygamous marriage was 24.24 years old. Although polygamy is a criminal offence, it is generally not enforced among the Bedouin population.

891. At the same time, many Bedouin women who do manage to get an education find the strictures of their traditional role difficult to accept, leading a significant number of young Bedouin women to run away from their homes to shelters or half-way houses. Recently, higher education has begun to gain acceptance among some Bedouin parents who realize that in order for their daughters to lead comfortable lifestyles and find suitable husbands (given the rise in demand for educated wives among young Bedouin men), they must have an advanced education. Nevertheless, most parents still associate universities with decadence, and fear that sending their daughters to study will result in the desecration of their family's honour.

892. **Female Circumcision**. Ritual female genital surgery, or female circumcision, has been found to be a normative practice among several Bedouin tribes in southern Israel. Generally, the circumcision occurs between the ages of 12 and 17, as the girls have passed menarche but have not yet reached a marriageable age. A physical examination of women from the tribes in question showed that the surgery performed on them did not involve

clitoridectomy. However, all of the women recorded bleeding and pain at the time of the ritual surgery, several required medical attention, and all reported pain during intercourse in the months after marriage. Those Bedouin women among whom the custom is prevalent refer to it as "purification". On the whole, it would appear that most women in these tribes will continue to practice ritual genital surgery on their daughters. The State has not intervened to control or prevent the practice of female ritual genital surgery among the Bedouin tribes. In several specific cases, government social workers have advised Bedouin women of the possibility of refraining from the practice.

Related rights

893. The equal enjoyment by minorities in Israel of certain other rights under the Convention, such as the freedom of movement, the freedom of expression, the right to vote and be elected, which bear an important relation to the rights specifically enumerated in this article, is discussed under articles 12, 19, 25 and 26.